

ALLEN COUNTY PUBLIC LIBRARY



3 1833 07362 6506

VOL. V, No. 3

April 1, 1934



University of Arizona Bulletin

GC
979.1
H861CH

SOCIAL SCIENCE BULLETIN No. 6

A Chapter in Early Arizona Transportation History The Arizona Narrow Gauge Railroad Company

By
HOWARD A. HUBBARD

PUBLISHED BY
University of Arizona
TUCSON, ARIZONA

University of Arizona Bulletin

VOL. V, No. 3

April 1, 1934

HOMER LEROY SHANTZ, Ph.D., Sc.D.....President of the University

PUBLICATIONS COMMITTEE

C. Z. LESHER, Chairman; G. M. BUTLER; P. S. BURGESS; R. J. LEONARD;
M. P. VOSSKUHLER; R. H. GJELSNESS; H. A. PRAEGER, Editor.

DEPARTMENT OF HISTORY AND POLITICAL SCIENCE

HOWARD A. HUBBARD, Ph.D.....Professor of History
Head of the Department
O. H. WEDEL, Ph.D.....Associate Professor of History
N. D. HOUGHTON, Ph.D.....Associate Professor of Political Science

STATEMENT OF MAILING PRIVILEGE

The University of Arizona Bulletin is issued semi-quarterly.

Entered as second class mail matter June 18, 1921, at Tucson, Arizona, under the Act of August 24, 1912. Acceptance for mailing at special rate of postage provided for in Section 1103, Act of October 2, 1917, authorized June 29, 1921.

Vol. V, No. 3

339722
April 1, 1934



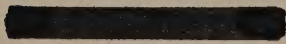
University of Arizona Bulletin

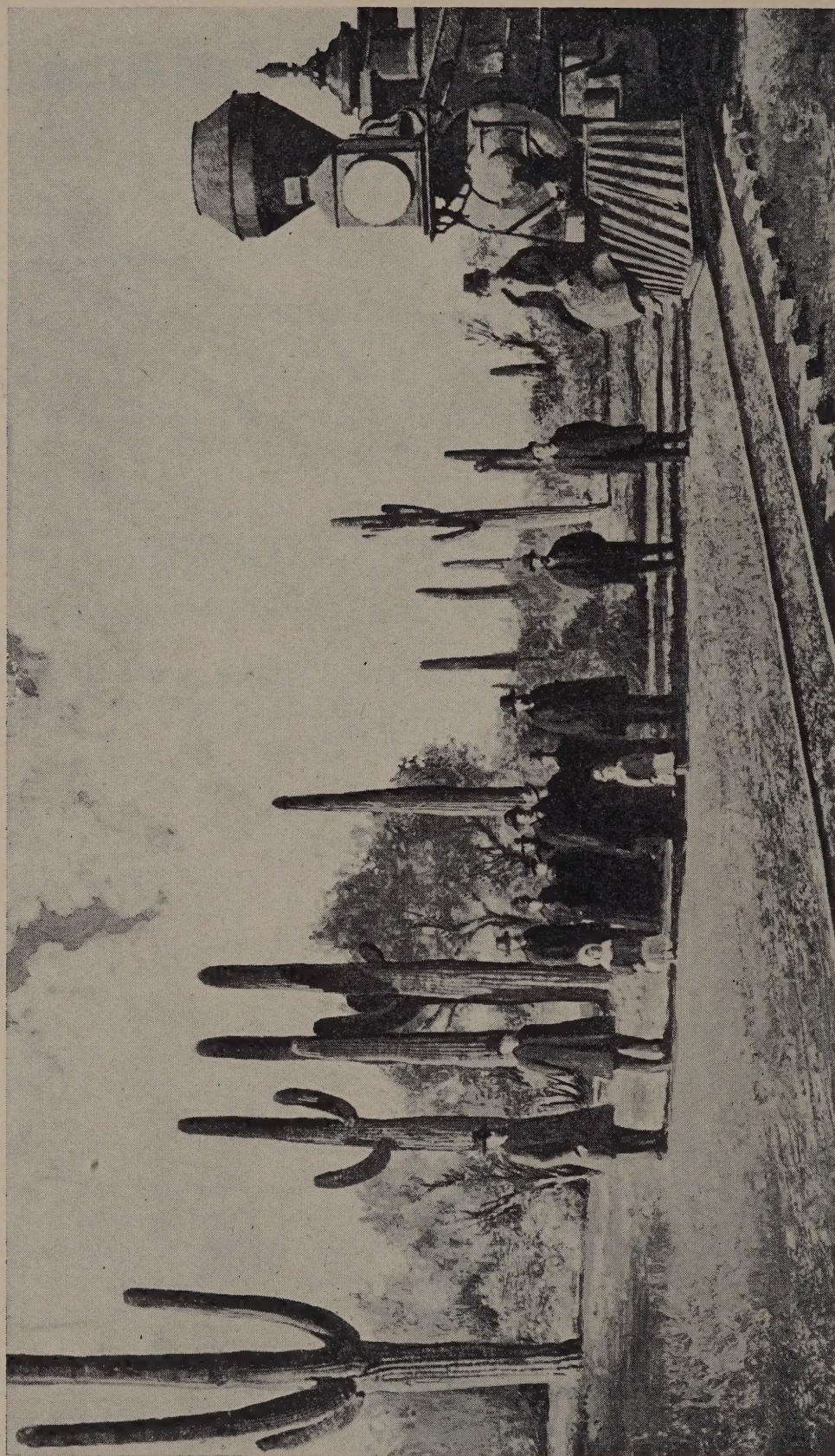
SOCIAL SCIENCE BULLETIN No. 6

A Chapter in Early Arizona Transportation History The Arizona Narrow Gauge Railroad Company

By
HOWARD A. HUBBARD

PUBLISHED BY
University of Arizona
TUCSON, ARIZONA





Courtesy of Arizona Pioneers' Historical Society.

Narrow Gauge Engine—Original photograph taken probably in the late eighties when a group from Tucson went on a picnic to the end of the Narrow Gauge line.

TABLE OF CONTENTS

	PAGE
Introduction	5
Launching the enterprise.....	10
A lost hope.....	31
Litigation.....	39
The bonds and statehood.....	54
The everlasting bonds.....	61

A Chapter In Early Arizona Transportation History

The Arizona Narrow Gauge Railroad Company

By

HOWARD A. HUBBARD

INTRODUCTION

That history repeats itself is a statement not only too trite, but too unscientific, to be offered in explanation of the constantly recurring phenomena incident to the American frontier as that line moved ever onward toward the Pacific. Pioneer transportation problems and pioneer transportation tragedies exhibit an impressive similarity, no matter whether related to the annals of Pennsylvania, of Michigan, or of Arizona. The universal optimism in the presence of large undeveloped resources, the bitter jealousies between rival growing communities, and the almost complete absence of even small amounts of available capital produce invariably the same frenzy for internal improvements aided by the credit of nation, state, or even smaller political units. Pioneer development has naturally stressed the necessity of available credit and ready transportation facilities. Industrial tragedies of pioneer periods have frequently featured one or both of these factors. The enormous expanses within the territory of Arizona and the still greater distances from profitable markets manifested most dramatically the operation of these two great forces, credit and transportation, in early Arizona history.

The story of the Arizona Narrow Gauge Railroad offers no new nor strange bit of history. Many analogies may be found in older localities where the East was once West. This narrative most distinctively emphasizes the presence of economic and geographical forces in history, and tends to refute the worn out fiction of the potency of personalities in directing political movements or in determining the destiny of a state.

In the early eighties Arizona had only inadequate connections in two directions with the outside world.¹ The Southern Pacific from the west coast connected with the Santa Fe at Deming, New Mexico. The Atlantic and Pacific extended westward from Albuquerque along the present line of the Santa Fe to Brigham City, 180 miles from Prescott. From these lines it was possible for frontiersmen to reach the vast interior over rough and precipitous mountain roads, but the unmeasured mineral wealth rested as yet untouched within the mountain ranges while there was scarcely a prospect of connecting routes branching from main lines that merely fringed the Territory. The magnitude of this potential wealth inflamed the imagination of pioneers of rival towns. Transportation was recognized as the key to two alternatives. Either it would open the door to probable success and progress, if a locality secured a road; or, in the event of failure, it would lock the door with a sentence to final oblivion. It was fairly certain that a route, once established, was destined to create its terminal into a thriving trading center, while the rival settlement, by the same fate, was doomed to return to the desert from which it had so recently sprung.

The year 1883 indicated a crisis and a period of decided change. What previously had been a mere desire for branch roads was at that date transformed into a burning enthusiasm with ardent propaganda. Two roads were projected from the northern trunk line.² One route was surveyed both from Winslow and from Flagstaff to Globe. Another survey was made from Chino Station, situated 154 miles west of Winslow, to Prescott from which place it was hoped to extend the road ultimately farther south to Phoenix. The surveys of these two proposed roads were to the south, a double threat to drain the mineral and agricultural wealth of the central region toward the north. It was not to be expected that towns along the Southern Pacific would sit idly by while the rare prize of becoming an industrial and shipping center was captured in its entirety by some outpost in the north.

It was quite natural that the localities in the central part

¹ *Report of Acting Governor*, 1881, p. 21.

² *Ibid.*, 1883, p. 8.

of the Territory forming the object of this contention could not be indifferent to the outlet, if they also were to prosper. Phoenix looked to the south rather than to the north; but whether toward the north or toward the south, Phoenix had to have a market. The shortest and most available route would connect the Salt River Valley with the Southern Pacific, but as early as 1883 prospective shippers in Phoenix recognized the danger of a monopoly of transportation in the hands of the Southern Pacific.³ There was a second possibility under consideration for Phoenix and that was a narrow gauge line direct to Tucson.⁴ Mass meetings were held, committees in both towns named, and correspondence begun. A third route seemed much more desirable to Phoenix, but the very thought of it struck terror to the business interests in Tucson. This third proposed route was to run from Phoenix up the Gila Valley to the mouth of the San Pedro river and thence up that river to Benson on its way to Tombstone. This would miss Tucson entirely. The Phoenix interests loudly boosted this proposal:

Benson is the point to which this valley should seek an outlet. We must not be dependent upon any one market With the road of which we spoke some days ago, from this place via Florence and the San Pedro valley to Benson our produce will have easy access to every desirable market in Southern Arizona. The Atchison, Topeka, and Santa Fe people might take this matter in hand. It should be properly presented to them.⁵

The position of Tucson was critical. The rivalry of Phoenix and Tucson was a very definite force that tended to divert the large undeveloped commerce of the interior not toward the latter town, but toward Benson. Tucson aimed not only at becoming an important shipping center, but at having this trade, based on large smelter establishments, supplied from mines in the center and southern sections of the Territory. In vain did Tucson advertise her need for hay and grain; Tombstone needed more.⁶ If the citizens of Tucson were to lag at this time, Benson would establish a lead that would make that place forever the dominating city of southern Arizona. Tucson was also struggling to build a road to Calabasas, but that was still on paper and destined for years so to remain. History was about to re-

³ *Weekly Phoenix Herald*, May 31, 1883.

⁴ *Ibid.*, May 17, 1883.

⁵ *Ibid.*, May 31, 1883.

⁶ *Ibid.*, May 24, 1883.

peat itself. The desert towns of the Southwest were facing a struggle as vital and as tragic as that faced by Philadelphia and New York over half a century earlier when they maneuvered for the commerce of the West. The same forces that made possible the Pennsylvania Portage Railway produced on the last frontier the Arizona Narrow Gauge Railroad. Each in its way was as ridiculous and as tragic as the other, but each represented those same fundamental principles of enterprise and struggle for dominance.

Such were the forces that drew Tucson, with all the irresistible tug of gravitation, into supporting the road that was to extend northward from the town. Energetic citizens were not blind to the possible opportunities nor torpid in their efforts. A petition signed by sixty-six individuals and firms of Tucson under the date of January 20, 1883, was read before both Houses of the territorial legislature February 7:

We, the undersigned, residents of Pima county, Territory of Arizona, respectfully petition your honorable bodies to pass the bill for the encouragement of the building of the road of the Arizona Narrow Gauge Railroad Company, now before your honorable bodies; deeming the building of said road will be of the greatest benefit and importance in the furtherance of the prosperity of the whole southern and eastern portions of this territory⁷

Nor were the efforts of the ardent propagandists relaxed in succeeding months even after the enterprise had been successfully launched in February, 1883, by the legislature of the Territory. An editorial in the *Arizona Daily Star* of April of that year no doubt expressed the optimism and enterprise of many of the most active citizens:

The opening of the section to the North of Tucson by the construction of the Narrow Gauge Railroad, will produce the largest return on the investment of any enterprise ever inaugurated in Arizona, as the line of the road will pass through the richest mineral section of the territory. It will tap the coal fields which alone will create a large and profitable trade. The lumber fields beyond Globe will supply the market for Arizona for half a century.⁸

The proposition that ardent alertness for transportation opportunities invariably tends to lead members of pioneer communities into unwarranted and ultimately catastrophic ventures is supported by the evidence that the Arizona Narrow Gauge Railroad was not the only venture that was

⁷ *Journals, Twelfth Legislative Assembly, 1883, p. 283.*

⁸ *Arizona Daily Star, April 25, 1883.*

looming on the horizon. Tucson was just as eager to tap the southern trade by means of a road leading to Calabasas. Already there were from three to seven car loads of ore going to Benson each week, and the proposed road to Calabasas would divert this southern traffic to Tucson. In addition there was the hopeful possibility of trade with Sonora, Mexico. Obviously Tucson clamored for exploitation. So firm was the confidence in the possibilities of a southern road that it was proposed that Pima County could well afford to give \$100,000 in support of such a route.⁹ Such was the economic background and such was the degree of popular optimism that made possible the notorious episode of the Arizona Narrow Gauge Railroad.

⁹ *Ibid.*, April 17, 1883.

LAUNCHING THE ENTERPRISE

The first formal proceedings launching the ill-fated venture occurred November 23, 1882, when the Arizona Narrow Gauge Railroad Company filed articles of association with the Secretary of the Territory.¹⁰ Expressive of the sentiment of the petition of February 7 from Tucson, already quoted, a bill was introduced in the Lower House of the Territorial Assembly February 6, 1883, and nine days later was reported by the committee.

The apparently successful lobbying on the part of citizens of Pima County brought forth active protest, February 16, from those connected with the proposed northern terminal of the road:

Your petitioners are residents of Gila County. They appeal to your honorable body in opposition to the passage of a bill now before you entitled 'An act to aid in the construction of a narrow gauge railroad from Tucson to Apache.' We object because this road is narrow gauge and does not touch Globe, Pima, too, while wealthier than the others would only have the interest on two hundred thousand dollars to pay, while Gila would not have less (as an actual survey would prove) than eight hundred thousand dollars.¹¹

Not only through petition but through active propaganda on the part of the *Globe Chronicle* was the measure opposed. It is not an inexplicable anomaly that the most inaccessible region of the Territory should oppose so strenuously the offer of a means of transportation. The resistance was without doubt inspired by the railroad interests of the north who were looking toward draining the traffic in that direction.¹² Later, when the prospects of a road to Globe from the north faded and when that town was finally destined as the northern terminal of the Narrow Gauge road, enthusiasm for an outlet toward the south equalled that in Tucson.

¹⁰ *Laws of Ter. of Ariz., Twelfth Assembly, No. 35, p. 61.*

¹¹ *Journals, Twelfth Assembly, 1883, p. 362.*

¹² *Weekly Phoenix Herald, February 16, 1883.*



Courtesy of Arizona Pioneers' Historical Society.

Arizona Narrow Gauge Railroad Survey, 1897—Although the survey was made to the Gila River, the grading never reached farther north than the Pinal County line. Rails were laid for a distance of only 10 miles.

The measure, as finally passed February 16, 1883, bore the title "An act to promote the construction of a certain railroad," and provided explicitly for the subsidy to be furnished by Pima County alone. Judging from the opposition that was roused in Gila County on the introduction of the bill, a larger patronage was at first solicited. It may have been the influence of the northern railroad interests coupled with the insistent lobbying from Tucson that narrowed the support down to Pima County solely.

The act provided that when the President of the Arizona Narrow Gauge Railroad Company notified in writing the Chairman of the Board of Pima County Supervisors that the railroad company was ready to exchange its bonds for bonds of the County,

it shall be the duty of said Chairman, and he is hereby directed to call a meeting of said Board, to be held within five days after the receipt of said notification, and it shall be the duty of said Board of Supervisors, that they are hereby directed to meet within five days at the county seat of said county, and then and there to order issued two hundred thousand dollars of bonds of said county, in denominations of one thousand dollars each, and bearing interest at the rate of seven per cent, per annum, interest payable semi-annually, the principal payable in twenty years.¹³

It was further provided that after the bonds had been duly signed by the Chairman and Clerk of the Board they were to be delivered to the County Treasurer who was to dispose of the bonds as provided further in the statute.

This provision of the Act as found in Section two amazes one seeing the torpor or shamelessness of the legislators. If any question was raised in the Assembly or by interested citizens of Pima County no publicity was given to the objections. Provision was made that:

Upon the application of the said railroad company to the said Treasurer, and the tender by said company of fifty thousand dollars of the first mortgage bonds of said company in like denominations, bearing like interest and payable in like time as those of said county, it shall be the duty of said Treasurer, and he is hereby directed to deliver fifty thousand dollars of bonds of said county to the President and Secretary of said railroad company, in exchange for fifty thousand dollars of the first mortgage bonds of said railroad company, so tendered as above provided.¹⁴

¹³ *Laws of Arizona*, 1883, No. 35, p. 62.

¹⁴ *Ibid.*

From this it may be seen that before a single spike was driven or before a single shovel full of earth was turned, \$50,000 in County bonds could pass into the hands of the Railroad Company with nothing but worthless paper given in return. All that the County could demand was the completion of 5 miles of road. As soon as the first section of 5 miles had been completed and certification of this fact had been made by the County Surveyor, officials of the Arizona Narrow Gauge Railroad Company were to appear before the Treasurer of Pima County with \$50,000 in 7 per cent twenty years first mortgage bonds of the Railroad Company which were to be given in exchange for a like amount of Pima County bonds as provided in the law. This was to continue until the entire appropriation of \$200,000 in County bonds was exhausted.¹⁵

In this way the credit of Pima County was to be used to furnish immediate working capital for the building of the Narrow Gauge road. To the ardent booster of that decade the enterprise was not a venture but the soundest of investments. Not only would the total railroad property increase the taxable assets of the County immeasurably, but to this were to be added smelters and other industries that would immediately grow up in Tucson as a result of the coming of the road. Nor did the liabilities of the County so courageously assumed rest solely on undeveloped taxable property. Pima County, upon the completion of the road to the northern boundary line, would hold \$200,000 in first mortgage bonds of the Arizona Narrow Gauge Railroad Company bearing interest that totaled an amount equal to the interest payments that the County must make. The law also provided for the sale of the railroad bonds held by the County; so a sinking fund was assured. If, in the face of this roseate prospect, some unforeseen catastrophe should possibly befall the enterprise, the act authorized Pima County to levy not more than 20 cents on \$100 of taxable property to meet the interest payments of the County.

In accordance with the provisions of the law, W. A. Culver, President of the Narrow Gauge Railroad Company filed on April 27, 1883, a notice with the Chairman of the Board of Supervisors that he was ready to exchange the railroad

¹⁵ *Ibid.*

bonds for the County bonds. A meeting of the Board was called for April 30.¹⁶ The meeting was held May 1 when Mr. Culver appeared with H. Farley, Secretary of the Railroad Company and presented "reasons and arguments" why the exchange of bonds should be made.

For the next three days there were heated discussions at daily sessions.¹⁷ To what extent there was general opposition to the scheme is difficult to determine. Subsequent issues of both local papers refer to such opposition; but there appeared to be no leader of an organized effort against issuing the bonds except from one member of the board, Supervisor Toole. May 5, Mr. Toole offered the following motion which failed for lack of second:

Ordered that the Board having duly considered the application of the Narrow Gauge Railroad Company for an exchange of \$200,000 bonds and being of the opinion that said railroad company is not in a position to give any guarantee that they intend, in good faith to build said road, it is ordered that until said company do some act in accordance with the provisions of the law under which they ask an exchange of bonds their application be refused and denied.¹⁸

This is the first intimation that the plan for the Narrow Gauge road was regarded as a swindle. Mr. Toole must have represented a very small minority and an unorganized group.

Immediately after the effort of Mr. Toole to defeat the County bond issue a motion was made by Supervisor Samaniego that \$200,000 of bonds be issued and placed in the hands of the County Treasurer. The Railroad Company was required to deposit a bond of \$500 to reimburse the County for its expenditures in the event that the Railroad Company did not fulfill its part of the agreement. This obvious fairness offers a touch of irony when viewed in the light of the subsequent history of the Company. Mr. Toole consistently voted against the motion, but it was passed by the votes of Supervisors Otis and Samaniego.¹⁹ By this ominous decision a majority of the County Supervisors decided that Pima County should subsidize the Arizona Narrow Gauge Railroad Company. Before the end of May,

¹⁶ *Minutes*, April 27, 1883.

¹⁷ *Ibid.*, May 2, 3, 4, 1883.

¹⁸ *Ibid.*, May 5, 1883.

¹⁹ *Ibid.*

1883, an order was sent to A. L. Bancroft and Company for lithographing the bonds.

The history of the Arizona Narrow Gauge Railroad for the period from May, 1883, to the spring of 1886 is clouded in obscurity. Scanty are the records in the minutes of the County Supervisors and equally silent are the local newspapers. Only a few facts stand out clearly; the rest is to be inferred. The law, as already explained, explicitly provided that the first exchange of bonds might take place before the Railroad Company had raised a single dollar from the sale of stock or had even made a pretense at beginning construction. It is necessary to emphasize this clause in the law to understand the fact that while never more than 10 miles of road were completed, yet a total of \$150,000 of County bonds were ultimately outstanding. Scandalous as was such a law, yet even more scandalous were the events connected with the transfer of the first lot of bonds. The County bonds left the office of the Treasurer of Pima County in three separate batches of \$50,000 each. The first lot came into the hands of the railroad officials sometime between May, 1883, and June 16, 1884, as is indicated by an entry in the minutes of the County Supervisors:

Ordered that the Chairman of the Board be authorized when he shall deem it expedient, to institute proceedings for the recovery of the County Bonds issued to the Narrow Gauge Railroad Company and to stop payment of interest on the same.²⁰

Judge Sloan, in his decision of March 22, 1901, the import of which will be discussed later in the story, placed the first exchange of bonds in 1883, but only vaguely implied irregularity. His reference to the suit brought by a taxpayer in Pima County explains the abrupt though somewhat tardy change of front on the part of the Board of Supervisors:

It appears in evidence that the first exchange as provided by the act, of fifty thousand dollars county bonds for a like amount of railroad bonds, was made at some date during the year 1883. This is shown by the record in an action brought by a taxpayer of the county against the board of supervisors and the county treasurer in the district court of Pima County during the latter part of the year 1883 to restrain the latter from accepting the bonds of the Arizona Narrow Gauge Railroad Company in exchange for the bonds of the county.²¹

²⁰ *Minutes*, June 16, 1884.

²¹ *Arizona Reports*, Vol. 7, No. 546, p. 312.

Obviously official indignation reached a higher pitch some five months later in November of 1884, for at that date an unequivocal command was issued from the chamber of the County Supervisors:

Ordered all the members voting 'aye' that the County Treasurer be instructed not to pay any interest on the Bonds issued by the County to the Arizona Narrow Gauge Railroad Company until he receives the further order of the Board and that the Clerk transmit a copy of this order to the Treasurer.²²

This change in the attitude of the Board reflected popular indignation on the part of outraged taxpayers against rumored corrupt practices. W. L. Vail had been elected to the Board of Supervisors as a reforming candidate.²³ Either through the influence of Mr. Vail or in response to popular resentment, Mr. Samaniego voted November 7, 1884, to withhold payment of interest on the very bonds he had ardently supported nineteen months before.

What were the causes of this changed attitude of the Board between May, 1883, and June, 1884? First of all there was the action brought by a disgruntled taxpayer against the Board of Supervisors and the County Treasurer in the District Court of Pima County in 1883 and referred to by Judge Sloan in his decision of 1901. Almost half a century after the events just described, stories much more positive than mere vague gossip persisted among pioneers of Tucson indicating a clandestine transaction whereby the County bonds left the hands of the County Treasurer and got into the hands of the railroad promoters. Such a deal must refer to the first lot of \$50,000 bonds, and the incident must have occurred shortly after May, 1883. These rumors seem to have been generally accepted, for the Honorable Mark Smith in testifying before the Senate Committee on Territories, February 19, 1910, in reference to these County bonds once held by the Treasurer of Pima County said that "somehow they got out of it and got into circulation."²⁴ But Delegate Smith, either through tact or lack of information, hesitated to place the blame as indicated further in the hearings:

²² *Ibid.*, November 7, 1884.

²³ Interview, E. Vail, Tucson.

²⁴ *Hearings*, S. 5916, p. 35.

Senator Dillingham: "And the misery of it is that these bonds got into the hands of innocent purchasers, when, as a matter of fact, these bonds disappeared from the treasury."

Senator Hughes: "They were stolen?"

Mr. Mark Smith: "I said I don't know how they got out."²⁵

Senator Beveridge, Chairman of the Committee on Territories, probably basing his opinion on the above statements of Delegate Smith, also referred to the bonds as fraudulent, "in that the bonds were gotten out of the safe in an illegal manner that nobody knows about;" and "in that they were put upon the market in some manner that no person knows about."²⁶

In considering the above statements which were made almost thirty years after the first lot of bonds disappeared, it should be kept in mind that popular indignation incident to the surreptitious conveyance of the first lot of County bonds was later transferred to subsequent transactions. Years later residents averred that all the bonds and interest coupons were not delivered to anyone authorized by Pima County to do so, that the County never acknowledged any of the bonds, and "that the bonds and coupons were not sold or exchanged in good faith, and in compliance with the act of the legislature by which they were authorized."²⁷ It should be noted, moreover, that while all three lots of County bonds may have been transferred without value received, it was the first lot that "disappeared" from the office of the County Treasurer which marked a distinctive phase of the history of the Arizona Narrow Gauge Railroad.

The shock of disillusionment that prompted the County Supervisors to decisive action during the summer and early autumn of 1884 was only partly shared by other interests. At least the opposition to the railroad promoters appeared very poorly organized. June 21, 1884, the *Citizen* quoted an article from the *Star*, both papers being published in Tucson, in which the latter suggested that Pima County reimburse the Railroad Company for the amount already spent which then approached a sum of about \$25,000. It was contended that by such an arrangement the County might be saved

²⁵ *Ibid.*, p. 40.

²⁶ *Ibid.*, p. 87.

²⁷ *Murphy v. Utter*, U. S. 186, pp. 97-98.

from a further loss of \$175,000.²⁸ The *Citizen* attacked the proposal of its rival, pretending to see no grounds for such an advance, unless all were ready to admit that the road was a failure. In that event it might be wiser to reimburse the Railroad Company and destroy the entire lot of \$200,000 in County bonds. The *Citizen*, however, was not ready to grant that the road was a failure.

We have believed in this road; we still believe in it. The road will be built as sure as the sun shines.²⁹

It is interesting to note that there is no reference in either local paper to the disappearance of the County bonds from the safe of the Treasurer concerning which the County Supervisors had voted an order five days before (June 16, 1884) to stop interest payments. This entry was in the minutes of the Board of Supervisors and could not have been secret, even though the *Citizen* referred to several secret meetings of the Supervisors on the days preceeding June 21.³⁰

The remainder of the period ending with the spring of 1886 was a complex of conflicting opinions. There were those who had not entirely lost faith in the Narrow Gauge road. Under the date of June 14, 1884, Attorney John Haynes, representing clients whose holdings lay along the proposed route, requested Secretary Teller of the Department of the Interior to separate a narrow strip north of the Gila from the White Mountain Indian Reservation in order that a right of way might be secured for the road through the canyon of the Gila between the mouth of Ash Creek and the mouth of Disappointment Creek.³¹ Not only was this the sole available route for the road, but here lay copper claims whose possible development depended upon the Narrow Gauge Railroad.

Mingled with this hope was a note of warning from the same paper that certain interests located at Benson were scheming to gain control of the Narrow Gauge franchise.³² This apparently was a repetition of frequent calls to concerted support of an enterprise that would give "permanency" to Tucson because of connection with other localities.

²⁸ *Arizona Weekly Citizen*, June 21, 1884.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Arizona Weekly Citizen*, July 5, 1884.

³² *Ibid.*

After the flurry of interest in the summer of 1884 the railroad situation rested quietly until the opening of the next year. Faith in the realization of a Narrow Gauge Railroad was, for the time being, dead; but hope rose from two other sources. Phoenix was again clamoring for a market. M. H. Calderwood had shipped a load of hogs from the valley to Tombstone at a cost of \$24, while the same load could have been brought from Los Angeles for \$14.³³ The outcry against discrimination anticipated propaganda for concerted action to secure a railroad connecting Phoenix and Tucson.³⁴ The call for help from the Salt River district met with an ardent response from Tucson. From the latter town came the suggestion that Pima County had available an ample bond issue for the support of a road. No mention was made of the \$50,000 in bonds stolen the previous year:

Now let us, instead of trying to build a road to Globe, join forces with Pinal and Maricopa and secure the building of the road to Phoenix at once.³⁵

This was a frank admission that the Arizona Narrow Gauge Railroad was regarded at that time only as ancient history. No one believed that it could return to life, and that the stolen bonds amplified by two succeeding issues of like amounts would return to haunt the State a quarter of a century later.

Interest in railroads manifested itself from a second quarter. The proposed road from Calabasas to Tucson was organized as the Calabasas, Tucson, and North Western Railroad Company. The Pima County Board of Supervisors, in accordance with the act of February, 1883, voted a subsidy of \$200,000 for this road.³⁶ The County bonds were to be placed in escrow, one-half to be given to the road when the section from Calabasas to Tucson was completed, the remainder to be turned over when the road was completed from Tucson to the northern boundary of the County. The latter section was to follow the route of the proposed Arizona Narrow Gauge Railroad. The unprecedented caution on the part of the Supervisors in having the County bonds

³³ *Weekly Phoenix Herald*, January 8, 1885.

³⁴ *Ibid.*, February 18, 1885.

³⁵ *Arizona Weekly Citizen*, February 21, 1885.

³⁶ *Minutes*, April 20, 1885.

placed in escrow was in response to a petition twelve days before from the Live Stock Association of Pima County.³⁷ While no mention was made of the bond disappearance of the previous year, the implication was obvious.

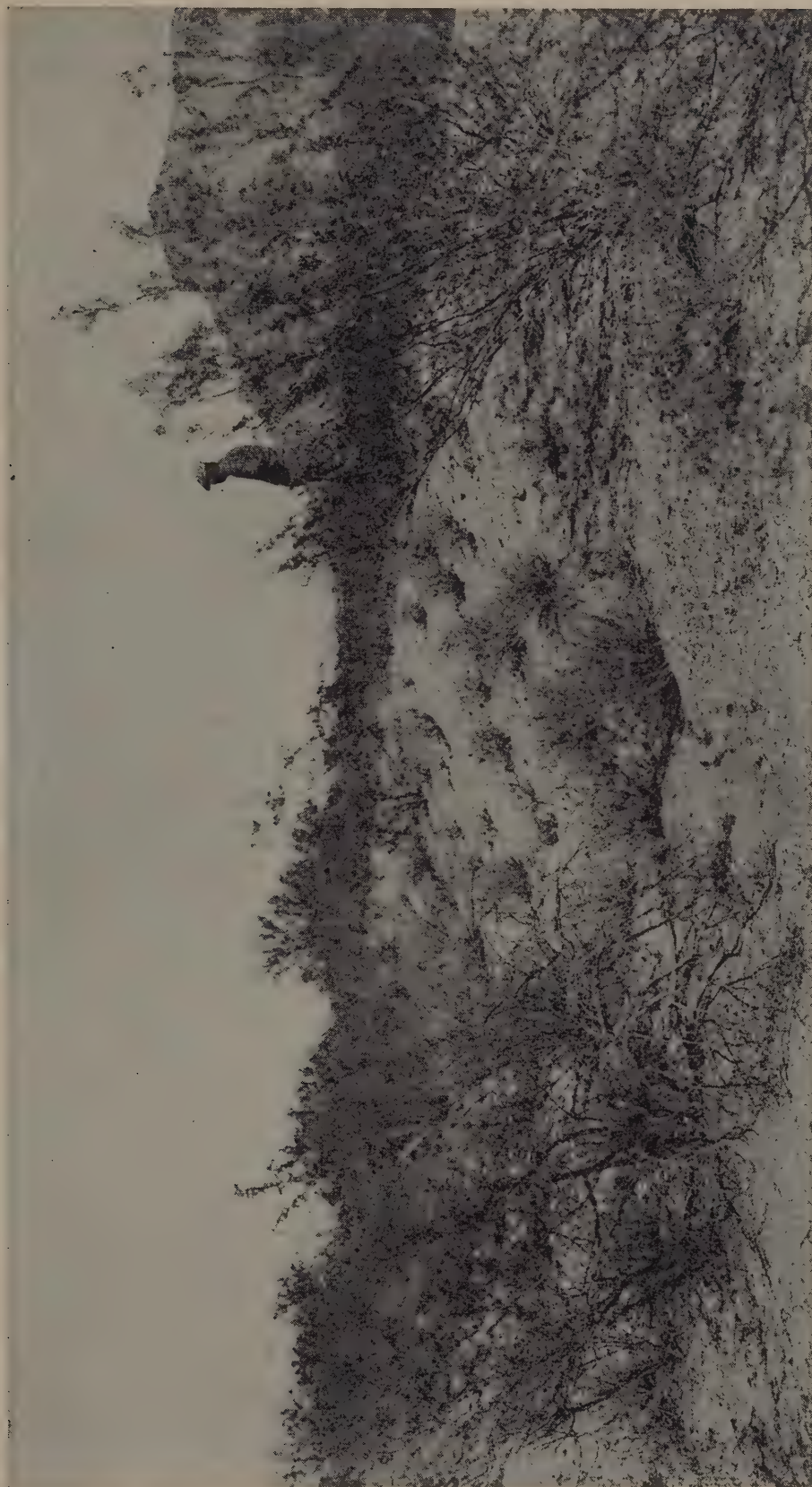
Almost half a century after the occurrence one might well ask whether there was an actual connection between the renewed interest in railroads in Pima County in the spring of 1885 and the reappearance of the President of the Arizona Narrow Gauge Railroad upon the scene. Most certainly it could not be coincident. One seems justified in inferring that the voting of \$200,000 in County bonds to the Calabasas, Tucson, and Northwestern Railroad was evidence that the officials of Pima County were ripe for further exploitation. At any rate President Culver of the Narrow Gauge came before the Board and asked that the opinion of the District Attorney in regard to the action of the previous Board in refusing to provide for interest on the County railroad bonds be handed to the County Treasurer. This matter was discussed at a subsequent meeting, and the opinion of the District Attorney was ordered to be handed to the County Treasurer and a copy filed in the office of the County Board.³⁸ No record of this opinion is to be found in the office of Tucson or Phoenix, but the logical inference is that it permitted a reversal of the Board's decision not to pay interest on the bonds. As a matter of fact no interest was paid until special provision was made a quarter of a century later. As far as County documents and newspaper items are concerned, the history of the Arizona Narrow Gauge Railroad remained a closed book for another twelve months.

The ten months beginning with March, 1886, formed another outstanding period in the history of the Arizona Narrow Gauge Railroad. While the period from May, 1883, to March, 1886, had been one of vague references interspersed with prolonged silences, the shorter succeeding period was characterized by activity and expression. The opening of the period found the Railroad Company still intact. Ten or 12 miles had been graded sometime during the previous period, but this construction was innocent of wood or iron.³⁹

³⁷ *Ibid.*, April 8, 1885.

³⁸ *Ibid.*, April 13, 1885.

³⁹ *Phoenix Weekly Herald*, May 13, 1886.



Photograph by J. G. Brown.

Narrow Gauge Embankment, 1934—West of Oracle Road and south of Ina Road.

Not one cent had been nor ever was to be paid by the subscribers to the \$3,000,000 of capital stock of the Company. The \$50,000 in County bonds that had found their way from the Pima County Treasurer's safe into the hands of the road officials were awaiting the dawn of a more favorable day.

That day was introduced by a revival of popular enthusiasm for the Narrow Gauge road. This enthusiasm, just as one year before, followed a renewed interest in the road from Calabasas to Tucson. Optimists already visualized this line reaching northward and possibly connecting with roads extending southward from the Atlantic and Pacific line.⁴⁰

J. A. Gaylord, representing the banking firm of W. A. Coler and Company of New York City, appeared in Tucson about the middle of March, 1886, as the inspiring genius of the renewed interest in the Arizona Narrow Gauge Railroad. Coler and Company were prepared to purchase Pima County bonds, not those subsidizing the road from Calabasas to Tucson, for, according to Gaylord, the road was unknown in New York; but the New York firm wanted those bonds subsidizing the Arizona Narrow Gauge Railroad. It will be recalled that there was no provision for placing the latter bonds in escrow, as in the case of the Calabasas bonds. That fact accounted for New York's profound interest in the Narrow Gauge bonds. As a promoter, Gaylord established himself as the great exemplar of high-powered salesmanship.⁴¹ His was not the lightest task, this selling the idea of an incomplete, defunct, and absolutely discredited railroad to an already despoiled and thoroughly disillusioned community. The very simplicity of the method may account for the success of the scheme. In the first place Coler and Company would not purchase the bonds unless the road was a good one, reaching to the center of the Territory. That was the very thing that the citizens of Tucson wanted. In the second place the firm wanted assurance that the interest and principal would be paid. In the minds of the worthy residents of the pioneer town a good road would be cheap at almost any price. In that way was the miracle wrought that led a

⁴⁰ *Arizona Daily Star*, March 3, 1886.

Ibid., March 11, 1886.

⁴¹ *Arizona Weekly Citizen*, March 13, 1886.

group of leading citizens, in response to an invitation from the President of the Board of Supervisors, actually to pass resolutions favoring the villainous Narrow Gauge. Whether gullible or venal these citizens left an indelible blot on the history of Arizona. They must have known that the articles of incorporation fixed the capital stock of the Company at \$3,000,000.00, that not one cent of this had ever been paid, and therefore that the corporation had been insolvent from the first.⁴² They certainly knew that one-fourth of the Narrow Gauge bond issue was already in the hands of the organization with no value received. In the face of those facts came the resolutions:

Resolved, That we are ourselves in sympathy with the objects and purposes of the Narrow Gauge railroad, and desire to see the same constructed as rapidly as possible and we believe we express the general position of the people and taxpayers of this county on this subject.'

Resolved, That if the money derived from the sale of the Bonds of Pima County issued in bid of this enterprise is applied to the construction and equipment of said road as far as the \$200,000 will construct and equip the same, that the sentiment of the community would be unanimously in favor of the County promptly meeting the interest payment of said bonds and the principal as well when due.

Resolved, That we expect that the management of said road will push the construction of same to Globe with all possible diligence.⁴³

Thoroughly persuaded in favor of the prospect of almost immediate railroad connections, Tucsonans were not inclined to let the grass grow under their feet. The day following the momentous meeting with the President of the County Supervisors, George Pusch and R. N. Leatherwood accompanied by the plausible Gaylord and General Tuttle of Iowa left for Globe to ascertain the possibilities of freight traffic from Gila County.⁴⁴ These prophets from the south were given the warmest welcome, and the two towns found themselves united by bonds of common interest if not as yet by a road of iron.

A fortnight passed with hope growing ever brighter. Re-

⁴² C. B. Wilson Papers. Mr. Wilson furnished the author the material he used as Attorney in *Jesse L. Boyce et al. vs. The County of Pima et al.* when that case came before the Supreme Court of Arizona in 1922.

⁴³ *Arizona Weekly Citizen*, March 13, 1886.

⁴⁴ *Arizona Daily Star*, March 17, 1886.

newal of work on the road bed in the form of construction of bridges and culverts was assured for the second week in April.⁴⁵ That week, moreover, brought evidence more substantial than renewed construction:

The first assuring fact that the Tucson and Globe Narrow Gauge railroad is to be built, was received by telegraph from J. Alden Gaylord, of New York, that the Pima county bonds issued in behalf of that enterprise had been sold and that the building of the road is now a fixed fact.⁴⁶

Fortune's smile could not have been kindlier than it was by the middle of April, 1886. W. N. Coler, himself, the purchaser of the Pima County bonds, stopped for a short visit in Tucson on his way to San Francisco.⁴⁷ His most ardent interest appeared to be the early completion of the road. A construction locomotive, other construction equipment, and one hundred thousand steel rails were already on their way to Tucson. Mr. Coler was responsible for a disclosure that more than offset the disappointments of previous months. The Railroad Company was seriously considering extending a branch of the Narrow Gauge to Florence and Phoenix. In fact it was practically assured.

With so many evidences of good faith on the part of the Arizona Narrow Gauge Railroad Company, the Board of County Supervisors could not possibly sustain longer the Board's order of November 7, 1884, which stopped interest payments on County railroad bonds. Persistence in this policy could bring only ruin to the County. Certain forces worked for the reversal of the November order. One member of the Board was connected with the Railroad Company. Let it be said to his credit and that of the Board that he righteously retired whenever railroad matters were discussed and his place was filled by the Judge of the Probate Court. Nevertheless, his presence on the Board could not possibly have been a menace to the interests of the Narrow Gauge. President Culver of the Narrow Gauge pleaded for reconsideration. Even the "District Attorney was present and submitted a written opinion to the effect that this Board has a right to rescind the resolution . . ."⁴⁸ In the presence of such pressure the Board succumbed, May 4, 1886; the

⁴⁵ *Ibid.*, April 3, 1886.

⁴⁶ *Arizona Weekly Citizen*, April 10, 1886.

⁴⁷ *Ibid.*, April 17, 1886.

⁴⁸ *Minutes*, May 4, 1886.

order to cancel interest on County railroad bonds was recalled, and the Arizona Narrow Gauge Railroad Company was given *carte blanche* to continue further exploitation of the credit of Pima County.

The contagion of enthusiasm concerning a railroad running northward from Tucson spread even to the Salt River Valley:

Phoenix will wake up one of these fine mornings by the scream of a locomotive. While she sleeps others work Mr. C. C. Stevens, resident director of the Tucson and Globe Narrow Gauge railroad who has been visiting Phoenix for the last two or three days not only informs our reporter that the company is at work on the road with a considerable force but that over \$100,000 worth of material has been purchased and is now on the way to Tucson and that two locomotives have also been purchased and will soon be on the way. . . . The main line is to be built direct to Phoenix via Florence. Some weeks since while in Tucson the Editor of the Herald was informed that, in fact, this was the original intention of the road; a branch road will also be built to the San Carlos coal fields and probably to Globe.⁴⁹

Either as a result of Tucson diplomacy or Phoenix optimism the main line, in the mind of the *Herald*, was to run not to Globe, but to Phoenix. One Phoenix citizen with true pioneer patriotism announced he was ready to wager \$250 against a like sum that Phoenix would have two railroads within two years. The *Herald* had already donated the highway iron bridge across the Gila at Florence until such a time as the Railroad Company might be prepared to construct its own bridge.

The statements regarding constructions were not exaggerations. Rails were actually being piled by the track of the Southern Pacific north of the depot, and construction was ready to begin early in the week following May 16. There was an unconscious but ominously prophetic note in the exaltation of the *Citizen*. "The Narrow Gauge Railroad is all here excepting the whistle, which is sidetracked at Deming."⁵⁰ Yes, the whistle was to come later.

The zenith of general enthusiasm for the road was reached the middle of May, 1886. In its issue of the last week of that month the Phoenix *Herald*, so encouraging only two weeks before, sounded a note of warning.

⁴⁹ *Weekly Phoenix Herald*, May 13, 1886.

⁵⁰ *Arizona Weekly Citizen*, May 15, 1886.

Tucson seems to be accumulating some material for the narrow gauge railroad, but the fact that there has been no surveys completed and considerable blowing going on, makes the movement look decidedly suspicious and the people are beginning to distrust the operators and promoters of the enterprise, and it seems that the promoters of the scheme don't allow themselves to be shown up in the front of the enterprise, another suspicious feature.⁵¹

With the one exception of the article of May 13, previously quoted, Phoenix showed decided skepticism regarding the future of the Narrow Gauge. Moreover, just a fortnight before that date the *Herald* on April 29 ridiculed the idea of various localities working to obtain railroads and intimated that all would be disappointed, since it would be years before any roads would be built.⁵²

Notwithstanding the superior attitude of Phoenix, as evidenced in the article of April 29, even that town became obsessed by the railroad craze on June 2, 1886, and organized the Maricopa and Phoenix Railroad Company. In one day \$40,000 were subscribed to the capital stock of the Company,⁵³ and there were even rumors of a \$200,000 bond subsidy to be furnished by Maricopa County. Such an enterprise connecting with the Southern Pacific would obviously defeat all possibilities of an independent narrow gauge branch ever reaching Phoenix from the south. For that reason Tucson openly chafed because of the venture and strongly denounced it as uneconomic.⁵⁴

In the meantime events were taking place in Congress at Washington that not only tended to limit both enterprises, but forever rendered it impossible for the Arizona Narrow Gauge Railroad to reach farther north than the boundary line of Pima County. In an undeveloped territory a branch road must either be built by one of the trunk lines which uses it as a feeder, thus getting profit from the additional freight over the long haul, or it must be subsidized by national or local government. It has been demonstrated that the Arizona Narrow Gauge depended exclusively upon county subsidies. If it were to be built outside of Pima County it would have to be subsidized by Pinal and Gila Counties. The tendency for frontier communities to sub-

⁵¹ *Weekly Phoenix Herald*, May 27, 1886.

⁵² *Ibid.*, April 29, 1886.

⁵³ *Ibid.*, June 3, 1886.

⁵⁴ *Arizona Weekly Star*, June 10, 1886.

sidize transportation enterprises had resulted so disastrously in the past that many states during the seventies had included clauses in their constitutions forbidding the use of state credit in support of private corporations. This idea was applied by national legislation in the eighties to the territories, since the movement that had wrought such havoc to state public finance several decades previous was just then reaching the territories.

February 1, 1886, Mr. Springer, Chairman of the House Committee on Territories, introduced a measure taken verbatim from the constitution of Illinois and forbidding the passage of special laws by territorial legislatures.⁵⁵ June 8, Senator Benjamin Harrison introduced a Senate bill to limit the creation of debts by the territories.⁵⁶ June 17 the provisions of Mr. Harrison's bill were added as an amendment to the House bill.⁵⁷ The bill with the amendment became a law July 30, 1886, and, among other items, provided:

That no Territory of the United States now or hereafter to be organized, or any political or municipal corporation or sub-division of any such Territory, shall hereafter make subscription to the capital stock of any incorporated company, . . . or in any manner loan its credit to or use it for the benefit of any such company or association, or borrow any money for the use of any such company or association.⁵⁸

The Harrison measure made provision for locking the stable to prevent the horse from being stolen. From the point of view of Pima County, Congress seemed to have locked the door after the visit of the thief. It did more. The Act actually prevented the recovery of even partial compensation for the loss. Granting that the road might have been constructed to Globe with the help of the northern counties and that Tucson would have profited by its completion, the Act of July 30, 1886, effectively blocked construction of the road farther north than the Pima County line.

Most amazing were the events that took place in Pima County from June 8 to July 30, 1886, the very time that the Harrison bill was pursuing its course through the legislative mill at Washington. Either prominent citizens and officials were ignorant of the import of the measure or were openly

⁵⁵ *Cong. Rec.*, 49th Cong., 1st. Sess., XVII, 1, p. 1043.

Ibid., 4, p. 4062.

⁵⁶ *Ibid.*, 5, p. 5392.

⁵⁷ *Ibid.*, 6, p. 5825.

⁵⁸ c. 818, 24 Stat. 170.

betraying the taxpayers of the County. The measure before the national legislature, however, in no way inhibited the local boosters as evidenced by an editorial in the *Star*:

What will the kickers say when the Narrow Gauge Railroad is completed? How will they feel when they estimate what they have lost in retarding its progress for three years? Time makes all things even. The Narrow Gauge is being constructed and Pima, Pinal, Gila and Maricopa will be the great beneficiaries.⁵⁹

The *Citizen* responded in the same tenor:

We tender our congratulations to our friends in Gila county, upon their bright prospects. . . . The Narrow Gauge will soon enter their town.⁶⁰

In the meantime the Railroad Company was making road while the sun shone. Construction material steadily poured into Tucson. By July 3 several miles of rails were laid, and ballast placed over a somewhat shorter portion of the road.⁶¹ Tucsonans were promised the possibility of going to Globe by rail for their Thanksgiving dinner.

There was method in all this mad railroad building. July 6, 1886, almost one month after Senator Harrison had introduced his bill in the Senate, and without waiting to see the import of the passage of the measure on the destiny of the Narrow Gauge, the Treasurer of Pima County stated before a meeting of the Board of County Supervisors that he had issued and received a second payment of \$50,000 worth of bonds.⁶² The *Minutes* referred to this exchange as the second exchange of bonds, and so implied a first exchange, even though no record of a definite first exchange had ever appeared in the *Minutes*. This implied first exchange could refer to no other than the reputed clandestine disappearance of \$50,000 in bonds which took place sometime between May, 1883, and June 16, 1884, and that, before a single rail had been put in place. To be sure, by July 6, 1886, 5 miles of road had been constructed; but in the light of the pending Harrison measure and certainly in the light of subsequent history, the action in connection with the second lot of \$50,000 in County bonds was scarcely less reprehensible than the action in connection with the surreptitious first lot.

Efforts of the Railroad Company did not cease with the

⁵⁹ *Arizona Daily Star*, June 15, 1886.

⁶⁰ *Arizona Weekly Citizen*, June 26, 1886.

⁶¹ *Ibid.*, July 3, 1886.

⁶² *Minutes*, July 6, 1886.

payment of the second lot of bonds. Throughout the remainder of July, 1886, construction was pushed, for there were still other plums to be gathered. Only half of the available \$200,000 in County bonds had been secured. That fact adds clarity to the picture drawn by the *Star* on July 29:

It is becoming quite apparent that the construction of the Narrow Gauge Railroad is a fixed fact. Nearly ten miles of track is laid and a large force of men are pushing the grade with rapidity. All of this and much more would have been accomplished three years ago had it not been for the violent opposition of evil-disposed persons in Tucson.⁶³

Each of the local papers from time to time had referred to opposition to the project, but these references were always more or less vague. Very definite opposition appeared August 12 in a report of a special committee named by the city council of Tucson. The Railroad Company had asked the city of Tucson for a grant of land to be used as a building site for the railroad shops, but the company had refused to stipulate in the lease what and when they were going to build. The committee granted that the Railroad Company had met its interest payments up-to-date, but implied a possible subterfuge in this. The vital questions that were raised further by the committee, and the futility of their efforts form another sad commentary on the possibilities for exploitation under our American system of local government:

. . . but there are many taxpayers of this county, who view with suspicion the disposal of so large an amount of money to the railroad company without any provision having been made, or guarantee being given, that they will not build more than fifteen or twenty miles of a little second quality, second hand railroad, which may never be continued and would be of no use to this county or anyone in it.⁶⁴

The Tucson committee could not have stated any more accurately the actual state of affairs, but the Arizona Narrow Gauge Railroad Company obviously held a commanding leverage at some point in Pima County politics. In spite of the questioning and in spite of the warning of August 12, a third lot of Pima County bonds was transferred to the railroad company sometime between July 6 and September 3, 1886. On the latter date the *Minutes* of the County Sup-

⁶³ *Arizona Daily Star*, July 29, 1886.

⁶⁴ *Arizona Daily Star*, August 12, 1886.

ervisors recorded a balance sheet which showed on the liabilities side \$150,000 of Narrow Gauge Railroad bonds, and on the assets side a like sum of bonds of the Arizona Narrow Gauge Railroad Company held by the County.⁶⁵ This is the first official record that a transfer of bonds of the Railroad Company had taken place in return for the first lot of \$50,000 bonds that had disappeared from the Treasurer's safe. Whether the transfer took place at the time of the disappearance of the County bonds or at some subsequent date will perhaps remain one of the mysteries of the past.

The situation in September, 1886, briefly stated was this: Pima County had given \$150,000 in bonds, holding in return for this expenditure \$150,000 of the Railroad Company's bonds. There was also in the County 10 miles of railroad that might be used as a basis for taxation. On the other hand, since the road began in Tucson and ended nowhere, its value as a commercial enterprise was nil as was also its value as a basis of taxation. The history of the Arizona Narrow Gauge Railroad, however, taken with all its implications was by no means yet ended.

⁶⁵ *Minutes*, September 3, 1886.

A LOST HOPE

The transition from a position of confidence and security to one of hopeless despair can in ordinary life scarcely be imagined to be the experience of a moment. Hope ebbs slowly and the shock of the realization of absolute defeat is frequently broken by successive stages. Something like this was the experience of the once enthusiastic supporters of the Narrow Gauge. The change in the public mind from the assurance of a Thanksgiving dinner at the end of the railroad in 1886 to the frank admission that the scheme was ending as a fiasco was not abrupt, but extended over a period of more than three-score months.

The history of the Arizona Narrow Gauge Railroad for the last quarter of 1886 marked a period of uncertainty, disappointment, and verging admission of failure. There remained \$50,000 of County bonds that the Railroad Company evidently hoped to get. The marvel is that it did not. The effect of the Act of 1886 was becoming generally recognized as making it impossible for financial aid to come from any source in the Territory other than from the sale of stocks or bonds of the Company. The *Star* of August 24, quoting from the Florence *Enterprise*, indicated that the national protection offered by the Act of 1886 against exploitation was quite acceptable in the mind of the Editor of the latter paper. In the midst of this situation the Arizona Narrow Gauge Railroad Company apparently began to maneuver to recover its bonds held by the County and to secure the remainder of the Pima County bonds. The Railroad Company proposed that its bonds held by the County be offered for sale at twenty-five cents on the dollar payable in cash or in Pima County bonds.⁶⁶ Had the last lot of \$50,000 County bonds fallen into the hands of the Company and had such disposal, as was requested, been made of the Railroad Com-

⁶⁶ *Arizona Weekly Citizen*, November 20, 1886.

Arizona Daily Star, November 17, 1886.

pany's bonds held by the County, it would have been possible for the Railroad Company with \$50,000 of the County bonds to have purchased the entire lot of \$200,000 of its own bonds and thus have held free title to \$150,000 of the County bonds. This fact was recognized in a *Star* editorial of November 21, 1886:

To state the facts in a few words and explicit terms, the Narrow Gauge railroad company asks Pima county to give \$150,000 outright to the construction of the road—all calculations must be based on the proposition as stated.⁶⁷

On the other hand the question might have arisen concerning the unwarranted anxiety of the Railroad Company to be relieved from its own obligations when its assets consisted only of 10 miles of worthless road. Obviously its chief goal was to obtain the last lot of Pima County bonds. How nearly it succeeded may never be known, but it did succeed in persuading a group of influential taxpayers to present the following petition to the Board of Supervisors on November 30:

We . . . respectfully petition your honorable body to encourage the speedy building of the Arizona Narrow Gauge Railroad to the San Pedro Valley by offering for sale, in the manner provided, by law, the bonds of said railroad company which the County now holds or may become entitled to; and, also, to accept any bid of said company on the basis of twenty-five (25) cents on the dollar for said bonds with the coupons attached, payable in cash, or in Pima County bonds at par, at the option of said company; but said bonds are not to be delivered nor payment required until the majority of the Globe trade is turned over said railroad to Tucson, and until sixty (60) miles of said road is in operation, and provided further, that the said sixty (60) miles of road shall be completed and the majority of the Globe trade shall be so turned within eighteen (18) months from the first of January next.⁶⁸

Uncertain and conflicting must have been the feelings of interested citizens during December, 1886. In the first place, the hope and propaganda of three years would not subside at once. The first week in December both Tucson papers quoted an article from the *Silver Belt* of Globe expressing confidence that "the Narrow Gauge people are in earnest and are not trying to build a railroad with wind work."⁶⁹

⁶⁷ *Arizona Daily Star*, November 21, 1886.

⁶⁸ *Minutes*, November 30, 1886.

⁶⁹ *Arizona Daily Star*, December 1, 1886.

Arizona Daily Citizen, December 4, 1886.

The same week the *Star* stated hopefully: "the Narrow Gauge road is a go, it will be built and that right speedily."⁷⁰ In the second place, retreat was impossible. A comparatively large investment had been made which would prove an absolute loss unless the road were completed. Rather than stop at that point, the payment of the final lot of bonds would be much wiser if by so doing the road could possibly be extended. Evidently this was the feeling of the taxpayers who petitioned the Board of Supervisors November 30. It must have been this feeling that the Railroad Company hoped to exploit in order to secure the last lot of \$50,000 in bonds. At any rate it is the only plausible explanation of succeeding events.

In the meantime the Railroad Company was playing every possible card to win the prize. November 30, six car loads of ties arrived in Tucson. At the same time the railroad President, the Chief Engineer, and the Assistant Engineer made a visit to Globe and not without results.⁷¹ The *Silver Belt* burst forth in headlines with "A RAILROAD AT LAST!"⁷²—a statement, to be sure, quite misleading. What actually happened was that W. W. Walker, Construction Engineer of the Narrow Gauge Road, had secured a contract from the Board of Supervisors of Gila County for the building of a wagon road from Globe to the northern extremity of the Narrow Gauge road. The explanation of this transaction was most obvious. The Arizona Narrow Gauge Railroad Company had abandoned all notion of extending the road to Globe. By this gesture and by the pretense of constructing 5 miles more of road the company hoped to get possession of the last lot of bonds.

Throughout December of 1886 and the first two months of the next year the question of the disposal of the Railroad Company's bonds held by Pima County created not a little controversy. On December 6 the Board of Supervisors inquired why the Treasurer had not advertised for the sale of the Company's bonds as ordered. The Treasurer excused his negligence on the ground that no definite date had been set by the Board for his publishing the notice⁷³ and that,

⁷⁰ *Arizona Daily Star*, December 4, 1886.

⁷¹ *Ibid.*, December 1, 1886.

⁷² *Arizona Silver Belt*, November 27, 1886.

⁷³ *Minutes*, December 6, 1886.

not sure of his own legal responsibilities in the matter, he had been consulting an attorney.⁷⁴ December 6, the Treasurer was ordered definitely to advertise the bonds. December 22, the order was repeated.⁷⁵ On the last day of the month the situation remained unchanged:

Chairman Mansfeld reported that the County Treasurer had peremptorily refused to advertise for the sale of the Narrow Gauge Railroad Bonds, and calls attention of the new Board to that fact.⁷⁶

The new year, 1887, introduced a new administration in the County, and with it a renewed determination to dispose of the Railroad Company's bonds held by the County. If exchanged for County bonds at twenty-five cents on the dollar, the \$150,000 of Railroad Company bonds would reduce the debt of the County by \$37,500. Most obviously there was no advantage to the Arizona Narrow Gauge Railroad Company to redeem its worthless obligations by giving up Pima County bonds that had a definite value in the Eastern market. It should have been clear to the County officials that the County had been cleverly exploited by shrewd sharpers, and that the hope of ever recovering one part of the \$150,000 expenditure or ever getting the slightest material return for it was the vainest of all expectations.

The new administration, nevertheless, went to work heroically on the impossible task. Referring to the failure of the previous Treasurer to publish notices of the sale of railroad bonds as provided by law, the Board of Supervisors, January 4, 1887, ordered that

the County Treasurer of Pima County be, and is hereby directed to make such publication of Notice for the space of four weeks, for sealed proposals for the purchase of all the Bonds of the Arizona Narrow Gauge Railroad company now in the hands of said Pima County, or to come into their hands⁷⁷

Apparently this decided action on the part of the new Board was not without results, even though in its final evaluation it was the emptiest of victories. In scarcely more than six weeks after the order of January 4, the Railroad Company yielded to the desire of the County officials and signed the following contract, no more valuable than the paper on which it was written:

⁷⁴ *Arizona Weekly Citizen*, December 25, 1886.

⁷⁵ *Minutes*, December 22, 1886.

⁷⁶ *Ibid.*, December 31, 1886.

⁷⁷ *Ibid.*, January 4, 1887.

. . . . and it appearing that John S. Wood, County Treasurer, has made publication of Notice of such sale according to law: that the said Arizona Narrow Gauge Railroad Company were the only bidders for said bonds, that their bid for said bonds is for twenty-five cents on the face value of said bonds (without interest) payable in the County bonds of Pima County at their face value (without interest) and a Contract or Agreement for the Sale and Surrender of said bonds and for the payment thereon having been this day made, executed and signed in triplicate by this Board of Supervisors and John S. Wood, County Treasurer, on behalf of Pima County and by the Arizona Narrow Gauge Railroad Company by their President and Secretary and W. W. Walker, Contractor, on behalf of said Arizona Narrow Gauge Railroad Company, fully covering the conditions of said sale and payment for said bonds, one copy of which said Contract or Agreement is on file with this Board.

It is ordered, That the sale of said bonds as provided in said bid and contract or agreement be and the same is hereby confirmed and approved, and

It is further Resolved that the Chairman and Clerk of the Board are hereby authorized to officially sign and execute said Contract or Agreement and that said Agreement or Contract is hereby confirmed and approved.⁷⁸

In most formal legal terms a contract had been drawn, but a contract that the railroad had no notion of observing. Twenty-one months passed, construction on the road had stopped, taxes were unpaid, interest was not met, and not a railroad bond had been redeemed according to agreement. The Pima County bonds had all been sold, and the returns rested safely in the pockets of the crafty promoters. Still the County officials seemed to hope. At least they resorted to one remaining weapon—that of hurling from the Court House resounding resolutions at the Company. On November 21, 1888, came an ultimatum.⁷⁹ Delinquent taxes could not continue. Interest must be paid. An extension of time to March 1, 1889, would be made, but if by that date the Railroad Company had not met these terms, the contract of February 17, 1887, would be null and void. Were not these events of Territorial history so full of tragedy, the threat of 1888 might well have deserved to rank as humor. March 1 came and passed, and then another year; the railroad remained inert.

In the midst of all this dismal chaos of pioneer finance there shone one bright ray. There still remained with the

⁷⁸ *Ibid.*, February 17, 1887.

⁷⁹ *Ibid.*, November 21, 1888.

County Treasurer \$50,000 of Pima County bonds that by some miracle the Narrow Gauge had not obtained. Some formal action was necessary. A meeting of the Supervisors was called July 23, 1890. The \$50,000 of unissued County bonds were cancelled, and the contract of February 17, 1887, declared terminated by default.⁸⁰

In the meantime 10 miles of Narrow Gauge road were credited to Pima County as a public asset, and around this strip of track still lingered vestiges of the hope that burned so ardently at the inception of the enterprise. The very gradual fading of this hope was an interesting phenomenon intimately connected with the history of the Arizona Narrow Gauge Railroad. Shortly after the *impasse* among the County officials, when the Treasurer refused to publish the notice of sale of bonds, the *Star* in an editorial of January 7, 1887, optimistically pictured not only a Narrow Gauge to Globe, but to Flagstaff as well, for from the latter point the Mineral Belt was destined to extend southward to meet at Globe the road from Tucson.⁸¹

With the opening of spring came renewed signs of life. Surveyors scaled the mountains seeking a route for the phantom road. Already two lines had been run from the Gila River over the Mescal, by that time known as the El Capitan Mountains. From the river to the mountains was a rise of 2,050 feet or a grade of 171 feet to the mile over a section 12 miles long. With the extended hope for a third survey was the depressing announcement that construction on the road in Pima County had altogether stopped.⁸²

A quiet summer passed. In the fall expectation flared again picturing no longer a fledgling Narrow Gauge, but a full-grown standard track. Nearly half a century later the reader marvels at the irrepressible spirit of the pioneer in the face of obvious defeat as it was expressed in an editorial of that day:

There is strong evidence that a question of a railroad from Tucson to Globe, thence to the Atlantic and Pacific is definitely settled. The road will be standard gauge, and will be the great north and south railroad with the Gulf of California as the southern terminus, and its northern terminus at some point on the Canadian Pacific. Such

⁸⁰ *Ibid.*, July 23, 1890.

⁸¹ *Arizona Daily Star*, January 7, 1887.

⁸² *Ibid.*, April 27, 1887. (Quoting the *Silver Belt*.)

is to be the destiny of the road now projected and its significance will be of as much importance as was the Union and Central Pacific thirty years ago.⁸³

The revival of interest in the autumn of 1887 was not altogether without foundation. Before the end of October some influence was working among the stockholders of the Company inducing them to call a meeting for the middle of the next month, when a revised policy would be presented.⁸⁴ The stockholders met according to agreement. A new organization was effected to be known as the Tucson, Globe and Northern Railroad Company. The route was to follow the old Narrow Gauge road bed which, as already intimated, was to be converted into a standard gauge. From the end of the old line the road was to extend to the junction of the Gila and the San Pedro, thence to Globe, and from that point it was to connect with the Atlantic and Pacific near the northern boundary of New Mexico. It was intimated that arrangements had been made with the American Trust Company of Boston which was to take the bonds of the newly organized company in amount not to exceed \$20,000 per mile of road.⁸⁵ This proved to be nothing more than another paper road, but it accounted for the renewed enthusiasm which, as in former days, reached Florence where the *Enterprise* welcomed the new organization and urged citizens of that locality to support it in some material way.⁸⁶

After the revival of interest in the fall of 1887 there followed a four and one-half years' period of almost unbroken quiet. Occasionally there was an attempt to revive the enthusiasm of the past, but it was the hopeless effort to rouse the dead. June 1, 1889, the *Citizen* broke a long silence with a pathetic editorial appeal, "WHAT CAN BE DONE?"

We marvel much that the Tucson and Globe railroad should so long remain an unrealized fact, considering the bright promise of a magnificent return upon the necessary outlay that would immediately follow the opening up of one of the richest mineral and agricultural sections there is in Arizona

The county has already contributed \$200,000 to help the good work along and with such a subsidy at the disposal of the projectors we are amazed that the road has not long since been built.⁸⁷

⁸³ *Ibid.*, October 19, 1887.

⁸⁴ *Arizona Daily Star*, October 22, 1887.

⁸⁵ *Arizona Weekly Citizen*, November 19, 1887.

⁸⁶ *Ibid.* (Quoting the *Enterprise*.)

⁸⁷ *Ibid.*, June 8, 1889.

Throughout the period mentioned above the Narrow Gauge, then designated as the Tucson, Globe and Northern Railroad, remained intact. With the exception of the single notice in the summer of 1889 that a car load of spikes had arrived, all activity had apparently ceased.⁸⁸ The Territorial Governor in his reports to the Secretary of the Interior in 1889 and in 1890 credited the Company with 10 miles of track.⁸⁹ The Territorial Board of Equalization assessed the property of the Company June 8, 1892, as follows:⁹⁰

Franchise, track, and roadbed.....	\$20,000
One locomotive and eleven flat cars.....	5,000
Total.....	<u>\$25,000</u>

The road as a means of transportation was dead. So completely did it disintegrate that old settlers, once familiar with the sight of the engine, the cars, and the old water tank standing beside the track, were not able forty years later to recall the exact time nor the occasion of the final disappearance of these material representations of the infamous road. Its ghost, however, was destined to haunt the County, the Territory, and later the State for many succeeding years.

⁸⁸ *Ibid.*, June 29, 1889.

⁸⁹ *Report of Governor*, 1889, p. 9;
Report of Acting Governor, 1890, p. 9.

⁹⁰ *Minutes*, July 21, 1892.

LITIGATION

Beginning with the new year of 1892 the Narrow Gauge road entered upon still another distinctive phase of its history. For over five years not a spike had been driven nor a spade full of earth turned. Naturally the Company had paid neither interest on its bonds nor taxes into the Territorial or County Treasury. On the other hand, neither had Pima County paid interest on the \$150,000 in bonds given in exchange for the railroad bonds. These bonds, however, were no longer the property of the disreputable Railroad Company, but had fallen into the hands of so called "innocent investors" who soon became restive under the accumulation of unredeemed interest coupons. It was this situation that introduced the new turn in the history of the Narrow Gauge. These bondholders, first by cajolery, then by threats, and later by litigation attempted to influence Pima County, finally carried the matter in three successive cases to the Supreme Court of the United States; and actually succeeded on two occasions in securing from Congress at Washington favorable legislation in support of their claims. Thus it came about that a railroad, 10 miles in length and as worthless as any ever created by the rascality of man, was, for a period of nearly two decades, raised to a place of notoriety in our national legislative halls and brought before the highest judiciary of the land.

About the middle of January, 1892, Tucson was honored by the presence of three important visitors, Messrs. Summer-ville, Bovard, and Hole, alleged representatives of Eastern railroad capital. The *Citizen* prefaced the account of their coming with double headlines which rang with the same old optimism: "ON TO GLOBE" and "PROSPECTS BRIGHTENING FOR A RAILROAD."⁹¹ The headlines belied the detailed account of Mr. Hole's address made at the time before the local Board of Trade. A careful study of Mr. Hole's

⁹¹ *Arizona Daily Citizen*, January 15, 1892.

speech made it quite obvious that the strangers were not bringing gifts to Tucson. Artfully and carefully they prepared the minds of the citizens of Tucson for the great inevitable: some day Pima County would have to meet the principal and the hitherto unpaid interest on the outstanding bonds. These representatives of the Eastern bond firm explained that their clientele were located in London, New York, and San Francisco. They further stated that if a bond issue were ever repudiated, knowledge of this fact would make it impossible for them ever to sell to their clients subsequent issues from the same locality. By way of illustration of this threat, Arizona's prospects of securing available working capital later had already been greatly impaired by the action of Pima County in refusing to recognize the bonds—a situation that no community could ever afford to permit.

Tucsonans were not stampeded into repentance. Mr. Cameron of Tucson stated before the meeting that the people of the County did not consider the Narrow Gauge bonds a just debt and that Pima County would never pay them unless compelled to do so. Other citizens, however, conceded that whenever the road was extended to Globe, they stood ready to urge the Supervisors to meet in full the outstanding obligations of the County. It was the opinion of Judge Wright, unofficially, that should the road be completed the Supervisors had the power, without the necessity of court procedure, to ratify the bonds and make them payable. Thus the meeting of January 14, 1892, just described marked a definite step in the history of the Arizona Narrow Gauge Railroad. The bondholders were obviously pressing for settlement. For the first time since the launching of the enterprise nearly ten years earlier, the local press registered an open expression of public opinion and frankly disavowed the dishonorable exploitation of Pima County at the hands of the Arizona Narrow Gauge Railroad Company. There was also evidence of united opposition on the part of exasperated citizens against recognizing the bonds even though such action might involve expensive litigation.

The anticipated legal controversy did come, and the bondholders brought action before the District Court of the First Judicial District of the Territory of Arizona where Judge Sloan in the spring of 1892 declared that the Pima County

bonds were void.⁹² The case, *Lewis vs. Pima County*, was carried to the Supreme Court of the United States where, October 29, 1894, the decision of Judge Sloan was sustained. The basis for this decision was the Congressional Act of March 2, 1867, which provided that territories cannot grant private charters or special privileges.⁹³ This Act was amended in 1878 providing that the Act of 1867 should not be construed to prohibit territorial assemblies from creating towns, cities, and other corporations. Since the Pima County bonds were not necessary for the administration of the internal affairs of the County,

We are compelled to hold that the bonds in question create no obligation against the county which a court of law can enforce.⁹⁴

Pima County was apparently free. The action of the Supervisors during the previous eight years in refusing to recognize this one bonded obligation of the County had been sustained by the highest tribunal in the land. The only possible recourse the bondholders might have was to secure national legislation making the Pima bonds valid. This was a possibility too important to be passed by. The bondholders were evidently sufficiently influential to control friends in Congress, for more than once bills were introduced with the purpose of validating the Pima bonds.⁹⁵ The Honorable Mark Smith, delegate from Arizona, was the watch dog of Pima interests. It happened that these measures were invariably referred to a committee of which he was a member and there they died.

No sooner had the decision concerning the Pima bonds been rendered by the Supreme Court than the possible implications of the case began to demand immediate consideration throughout the Southwest. If the case applied directly to Pima bonds, might it not likewise be made to apply to similar obligations of other counties in Arizona and even in another territory?

The first and most obvious instance was that of the Yavapai County bonds. The Prescott and Arizona Central, organized May, 1884, was completed a little over three and a

⁹² *Ibid.*, May 4, 1892.

⁹³ *Lewis vs. Pima County*, U. S. 155, p. 68.

⁹⁴ *Ibid.*, p. 69.

⁹⁵ *Senate Hearings*; S 5916, p. 36.

half years later, and connected the Atlantic and Pacific at Prescott Junction with the town of Prescott, 72 miles farther south. The Prescott and Arizona Central had been subsidized to the extent of \$291,000 by Yavapai County bonds. This road, overshadowed after March, 1895, by the new Santa Fe, Prescott and Phoenix line, passed out of the picture with its roadbed finally stripped of ties and iron.⁹⁶ The Yavapai County obligations, like those of Pima County, still remained. To complicate matters more the Sixteenth Territorial Legislature in 1891 provided for the creation of Coconino County out of a portion of Yavapai County. When the new County was organized it assumed its portion of the old Yavapai County debt, \$98,259.32 being its share of the County railroad bonds. Early in 1895 and following the Supreme Court decision, Coconino County brought suit to recover with interest the amount paid to Yavapai County on the railroad bonds.⁹⁷ To resist the efforts of Coconino County to recover the amount previously paid to Yavapai County as its share of the railroad subsidy, Yavapai County was forced to contend that the bonds were valid even though it had brought suit to prevent the refunding of the railroad bonds by the Territory since the refunding would without question make both counties liable for the amount of the railroad bonds. Thus Yavapai County was in the anomalous position of contending in one suit that the bonds were valid, and of denying in another suit the validity of the bonds.⁹⁸

The two Arizona counties just mentioned were not the only ones interested in the decision of the Supreme Court. Grant County in New Mexico had issued \$60,000 in bonds to subsidize a road between Deming and Silver City; Silver City had issued \$50,000 to subsidize the same road; and Santa Fe County was carrying a bonded obligation of half a million as a result of previous generosity toward the railroads. Even the citizens of New Mexico grasped at the possibility of escape from the burden of taxation as a result of the decision of the case, *Lewis vs. Pima*:

⁹⁶ McClintock, Vol. I, p. 300.

⁹⁷ *Arizona Reports*, Vol. 5, pp. 386-87.

⁹⁸ *Arizona Daily Citizen*, October 9, 1900.

If it should be held that neither Santa Fe nor Grant counties, nor Silver City have to pay these obligations, it will be hard on the bondholders, but it will be a relief to the taxpayers . . .⁹⁹

It is interesting to note that after the futile efforts in Congress to secure remedial legislation immediately following the Supreme Court decision, the first successful attempt along that line was originated in Arizona. It was initiated not by the holders of the Yavapai bonds, although later they did exert a powerful influence, but by President F. M. Murphy of the Santa Fe, Prescott, and Phoenix Railroad Company. Subsequently, when N. O. Murphy was running for the office of Delegate to Congress in 1900, charges were made that the Murphy family was interested personally as holders of Yavapai bonds.¹⁰⁰ This was denied in a statement that they had never owned any of the bonds. It is altogether possible that the charges were nothing more than political innuendo. F. M. Murphy was, however, indirectly interested in Yavapai bonds. His road entered Phoenix March, 1895. For two months previous to that time he had been exerting every effort to secure local aid to finance surveys for extensions to Nogales.¹⁰¹ Repudiation of the Yavapai bonds would make it most difficult for him to liquidate the bonds of this extended north and south railroad.¹⁰²

Matters culminated March 20, 1895, on the floor of the Territorial Assembly when a memorial was presented accompanied by a petition signed by President F. M. Murphy and many taxpayers of Yavapai County. President Murphy was granted the privilege of the floor where he made an impassioned plea for sound finance and territorial integrity.¹⁰³ If Mr. Murphy had secured the cooperation of certain citizens to gain his ends, there were others in his own county who saw the underlying meaning to this highly ethical stand in favor of meeting outstanding obligations:

News comes to Courier ears that an agent of the S. F. P. & P. railroad has circulated a petition in Prescott, securing some signatures to the same, calling on the Arizona legislature to memorialize congress to pass a special act

⁹⁹ *Arizona Daily Gazette*, Jan. 10, 1895. (Quoting *Lordsburg Liberal*.)

¹⁰⁰ *Arizona Daily Citizen*, October 9, 1900.

¹⁰¹ *Arizona Weekly Star*, January 31, 1895.

¹⁰² *Senate Hearings*, S. 5916, p. 36.

¹⁰³ *Arizona Daily Gazette*, March 21, 1895.

legalizing the Yavapai county P. & A. C. bonds. If this petition is not used on the legislature it will probably be used direct on congress, and while Delegate Murphy is having this special act passed he can also throw into the hopper an act legalizing the Arizona tax exemption law. Thus may the people of this county be ground between the nether P. & A. C. millstone and the upper S. F. P. & P. millstone . . .¹⁰⁴

Opposition to the memorial was most feeble. Scott, the Pima Representative in the Upper House, questioned the possible effect of the suggested national legislation on the existing status of the Pima County Narrow Gauge bonds. His was apparently one of the few dissenting voices, so thoroughly was the railroad political machine working in those good old territorial days.¹⁰⁵ All the Pima County members in the Lower House, including Mr. Samaniego, voted in favor of the memorial.¹⁰⁶ To state, as was later averred, that no one thought of the possibility of the measure applying to Pima bonds is a misrepresentation. The question was actually raised in the Arizona Territorial Legislature. Measures to validate the bonds had already been introduced in Congress at Washington. Later, when another bill appeared in response to the memorial, lobbyists representing Eastern bondholders were on hand at Washington to secure the desired legislation. There are only two possible explanations for the action of the Pima representatives in the Territorial Assembly. Either they were absolutely ignorant of the implications of the memorial they favored, or they were so under the thumb of railroad domination that they consciously betrayed the interests of Pima taxpayers.

The memorial began with a statement that, under various Acts of Congress, certain counties were authorized and had by means of bond subsidies aided railroads. Since questions as to the validity of these bonds had arisen and actual movements toward repudiation had in some instances begun, the Territorial Legislature was as a result induced to take a high moral stand:

Whereas we believe that such repudiation would, under the circumstances work great wrong and hardship to the holders of such bonds, and at the same time seriously affect the credit and standing of our people for honesty and fair dealing and bring us into disrepute, . . .

¹⁰⁴ *Prescott Morning Courier*, March 21, 1895.

¹⁰⁵ *Arizona Daily Gazette*, March 21, 1895.

¹⁰⁶ *Arizona Daily Citizen*, November 5, 1898.

Wherefore we most strongly urge upon your most honorable bodies the propriety and justice of passing such curative and remedial legislation as will protect the holders of all bonds issued under the authority of acts of the legislative assembly, the validity of which has heretofore been acknowledged, and that you further legislate so as to protect all innocent parties having entered into contracts resulting from inducements offered by our Territorial legislation, and relieve the people of the Territory from the disastrous effects that must necessarily follow any repudiation of good faith on the part of the Territory, and that you may so further legislate as to validate all acts of the legislative assembly of the Territory which have held out inducements for the investment of capital within the Territory . . .¹⁰⁷

The memorial, originating in the office of the President of the Santa Fe, Prescott, and Phoenix railroad, passed the Territorial Legislature without a hitch and in due time found its way to the legislative chambers of the national government. Here the Territory of Arizona was represented in 1896 by N. O. Murphy, brother of President F. M. Murphy who had so zealously championed the cause of Territorial honor on the floor of the Legislature at Phoenix. The bondholders, however, were not content to risk their fate even to this smoothly working machine, but through their attorney, Bird S. Coler, carried on a carefully planned lobby to secure the passage of their bill. Fourteen years later Mr. Coler testified before the Senate Committee on Territories the part he had played in securing the passage of the Act of June 6, 1896:

Then we came to Congress, and I was one of the small members that camped around the hall here in the early days, when a young man, trying to get the validating act through. We had Mr. Moody, who is now on the Supreme Bench, Mr. Speaker Reed, and a number of representative men. They looked into everything we had. We had quite strong opposition. I remember, for instance, that the Governor of New Mexico had opposed the validating act, and we produced a letter which he had written requesting us to buy the bonds and saying they were good . . .¹⁰⁸

What little opposition there was could not possibly compare with this organization. The railroad interests of Arizona desiring the legislation so far overshadowed the interests of Pima County taxpayers that it was entirely impossible for the desires of the latter ever to be noted from the Capitol building at Washington. In May, 1896, a most

¹⁰⁷ *Report of Governor to Secretary of Interior*, 1903, p. 261.

¹⁰⁸ *Senate Hearings*, S. 5916, p. 25.

plausible report was presented from the Senate Committee on Territories the full import of which probably not half a dozen men in either house comprehended. Certainly not as many as half a dozen knew the complete story of the Arizona Narrow Gauge Railroad nor the injustice that the Act would work on the citizens of Pima County. Obviously the Committee's report was innocent of any reference to the Narrow Gauge bonds:

It is not proposed to fund any indebtedness which could not have been funded under the original act had such indebtedness been presented in time.

No new indebtedness is proposed to be funded in excess of the limit prescribed by law. In authorizing the funding of the outstanding liabilities the act also validifies the indebtedness already funded and authorized to be funded, so as to prevent the possibility of repudiation of bona fide obligations.

The eighteenth legislature of Arizona unanimously memorialized Congress to validate securities about which doubt existed. Upon investigation the committee believe the legislation beneficial and wise and in the interest of good government, and therefore recommend the passage of the bill.¹⁰⁹

In explanation of the report of the Committee and for an understanding of the Act as finally passed, it should be noted at this point that six years earlier on June 25, 1890, Congress had passed an Act creating a Loan Commission for the Territory of Arizona. The Commission was composed of the Governor, the Auditor, and the Secretary of the Territory. It was the duty of this Commission to issue bonds of the Territory which were to be delivered to the Territorial Treasurer who in turn was to sell them for cash or exchange them for county issues outstanding, the county concerned becoming responsible to the Territory for the interest and principal.¹¹⁰ Four years later Congress passed an Act amendatory to the Act of 1890 which provided for "certificates and other evidences of indebtedness issued subsequent to December 31, 1890."¹¹¹ As the decision in the case of *Lewis vs. Pima*, based on the Act of 1867, had declared the Pima bonds invalid, the Supervisors of that County refused to ask the Loan Commission to refund their bonds. Likewise Yavapai County had refused to ask for the refunding of its railroad bonds. The position of Pima

¹⁰⁹ *Cong. Rec.*, 54th Cong., 1st Ses., XXVIII, 6, p. 5626.

¹¹⁰ *U. S. Stat.*, Vol. 26, 6. 175.

¹¹¹ *U. S. Stat.*, Vol. 28, p. 224.

County is not difficult to understand. While the Territorial bonds that might be issued in accordance with the Acts of 1890 and 1894 would bear an interest rate of 5 per cent instead of the 7 per cent which the original Pima County Narrow Gauge bonds carried, Pima County would at the time of refunding become responsible to the Territory of Arizona for both interest and principal. Since Pima County regarded the bonds fraudulent, and unless finally forced to do so, had no intention of paying either interest or principal, it is clear why no effort had been made toward refunding the Pima Narrow Gauge bonds.

The Act of June 6, 1896, was a victory for the combined forces of Arizona railroad interests and Eastern bondholders. It was, nevertheless, a most natural victory, having back of it all the forces of law and tradition. It was not a question whether Pima County had failed to get value received for the obligations issued. This failure rested on the fundamental weakness of American political institutions. The fact remained that the bonds had been issued, and were in the hands of "innocent" purchasers. Nor would custom tolerate consideration of the degree of innocence or rather, in this case, lack of innocence. The act of 1896 validated the Pima County Narrow Gauge bonds by stating that

all bonds and other evidences of indebtedness hitherto issued under the authority of the legislature of said Territory, as hereinbefore authorized to be funded, are hereby confirmed, approved and validated.¹¹²

The law of June 6, 1896, roused the citizens of Pima County into energetic activity. Not only did the Supervisors of the County refuse to permit the Narrow Gauge bonds to be refunded by the Loan Commission, but they won over the members of the Commission to such an extent that Governor Franklin devoted a lengthy section of his address before the Nineteenth Territorial Legislature, January, 1897, to a most sympathetic presentation of Pima County's interests.¹¹³ Since the Governor was a member of the Loan Commission he could speak authoritatively. Although the bondholders had requested the Commission to refund the bonds, that body had unanimously supported the Supervisors of Pima County in their refusal to have these County obligations thus recognized. Governor Franklin further indicated the de-

¹¹² *U. S. Stat.*, Vol. 29, p. 262.

¹¹³ *Journal, 19th Territorial Legislature*, pp. 54-56.

gree of his support by explaining in detail the position of the Commission: (1) Counties must demand of the Loan Commission that the bonds be refunded, and Pima County had made no such demand. (2) "We also believe that legislation cannot be enforced which seeks to impose an obligation on a community that it never owed, or consented to owe or be bound for, . . ." (3) No act of the national legislature could be enforced when such executive action ran counter to a decree of the Supreme Court.

In the meantime the bondholders had not been idle. December 31, 1896, they filed a petition for a writ of mandamus to compel the Governor, Auditor, and Secretary of the Territory of Arizona acting as Loan Commissioners to refund the Pima bonds.¹¹⁴ The petition was denied by the Supreme Court of the Territory. From this decision the bondholders appealed to the Supreme Court of the United States.¹¹⁵ On January 3, 1899, Justice Brown delivered the opinion that:

The order of the Supreme Court of the Territory must be reversed, and the case remanded to that court for further proceedings not inconsistent with the opinion of this court.¹¹⁶

Thus it was the opinion of the Supreme Court of the United States that the Act of June 6, 1896, had validated the Pima County Narrow Gauge bonds. As a result of the decision in the case of *Utter vs. Franklin*, Judge Sloan of the Territorial Supreme Court on March 22, 1901, stated:

that it is our plain duty, under the direction of the supreme court construing said congressional act, and mandatory upon us, to issue the writ of mandate prayed for, requiring the loan commission to fund the bonds in question, together with the interest due thereon, . . .¹¹⁷

The bondholders, however, had not entrusted all their eggs in the single basket of judicial procedure. At the very time that their petition for a writ of mandamus was pursuing its tortuous way upward through the courts, they fell back on the old reliable scheme of manipulating the Territorial Legislature. February 2, 1897, Fred G. Hughes of Pima County introduced in the Council "an Act authorizing and directing the payment of certain outstanding county warrants issued by the board of Supervisors of Pima

¹¹⁴ *Ariz. Reports*, Vol. 7, p. 304.

¹¹⁵ *Utter vs. Franklin*, U. S., 172, pp. 416-25.

¹¹⁶ *Ibid.*

¹¹⁷ *Ariz. Reports*, Vol. 7, p. 315.

County . . .”¹¹⁸ In speaking for the bill Mr. Hughes indicated that it was the opinion of many of the taxpayers of Pima County that the obligation was a just one and should be met. His plausible presentation almost won. It happened that there was sitting in the Council as Delegate from Yavapai County J. W. Norton, Chairman of the Judiciary Committee, and a man fundamentally and relentlessly opposed to the favored and well entrenched political interests of the Territory. Noting the undue haste, for there was an attempt to proceed with all three readings of the bill at one time, and noting further that the bill had never been referred to his Committee, he called a halt on the attempted rapid legislation. His keen intuition saved the day and the bill was killed. Almost at the very time of its defeat a group of indignant lobbyists from Tucson arrived in Phoenix determined to block the measure.¹¹⁹ To their great relief they learned from Mr. Norton that the bill had been defeated. Their fate, nevertheless, was yet undecided, for the court procedure recounted in the previous paragraph was still pending.

Upon the receipt of the report of the decision of the Supreme Court in the case of *Utter vs. Franklin*, January 3, 1899, hope was not quenched even in the face of that fact. For over ten years the County officials had resisted payment of interest on the \$150,000 of subsidy bonds. According to the decision, Pima County was liable for both principal and accrued interest which, in January, 1899, amounted to \$289,964.¹²⁰ The habit of ten years of resistance was not to be broken at once. Pima County was to continue to resist even in the face of the Supreme Court of the United States. A local editorial evidently indicated the general popular feeling at the time:

It is not probable that the supreme court of the United States, when it rendered its decision validating the Pima county bonds, did so upon a full presentation of the facts, for it is not conceivable that the court should, for any reason, desire to do the citizens of this county such a gross injustice as its actions would imply. Nor, to look a little further back, is it conceivable that congress when it passed the bill of 1896 validating our territorial and municipal indebtedness, intended to do injustice to the people of this county. Nor is it probable that the decision of the supreme

¹¹⁸ *Journal, Nineteenth Territorial Legislature*, p. 363.

¹¹⁹ Interview, J. W. Norton.

¹²⁰ *Arizona Daily Citizen*, January 4, 1899.

court will stand when all the facts in the case are properly set forth in court. The people of Pima county are confronted with a serious condition of affairs. If the decision is allowed to stand, they will be responsible for the payment of about \$300,000 worth of bonds, . . . The situation is grave, but it is not hopeless. The citizens of the county must act to the end that the decision of the supreme court may be reversed. We have an able and faithful district attorney to look after the case, but if other council is desired, we have it within call. Indeed, a petition was yesterday presented to the supervisors, asking the board to secure the services of Hon. Rochester Ford in conducting the case. . . . With the case properly presented, as it will be, the decision of the court will be changed.¹²¹

The first movement toward resisting the effect of the court decision appeared in the Territorial Legislature with the introduction of a memorial to Congress at the request of the Tucson Board of Trade.¹²² The memorial asked for the repeal of the Act of June 6, 1896, under which the Pima bonds had been validated. The memorial alleged that the entire plan of issuing the bonds was fraudulent, and that the memorial of the Eighteenth Territorial Legislature requesting the Act of 1896 was never intended to apply to the Pima bonds. The memorial passed the Territorial Legislature early in February.¹²³

Pima County was to learn that troubles do not come singly but in battalions. In the midst of the struggle for relief from an adverse court decision, a movement was set on foot to separate the southern portion of Pima County and form the new County of Santa Cruz. The tragic element in the situation was that the bill that provided for the creation of the new county was silent concerning the division of responsibility in connection with the Narrow Gauge bonds. Should settlement of the debt ultimately be demanded, Santa Cruz County would escape "scott free," while the citizens of the north would find a proportionally heavier burden shifted to their shoulders. An indignation meeting was held March 11, 1899, in the City Hall at Tucson; the two Pima Legislators who had voted for the bill authorizing the separation were condemned; but mere words could not change an Act already accomplished.¹²⁴ Moreover, Pima County was learning that litigation was expensive. Not only

¹²¹ *Ibid.*, January 10, 1899.

¹²² *Ibid.*, January 31, 1899.

¹²³ *Ibid.*, February 7, 1899.

¹²⁴ *Ibid.*, March 13, 1899.

was the old debt growing at an ever increasing rate, but to this had to be added attorney fees, traveling costs, and court expenses. By April 29, 1899, the original debt had more than doubled.¹²⁵

It should be recalled that Pima County was contending against the decision in the case of *Utter vs. Franklin* rendered January 3, 1899. Rochester Ford had been employed as attorney for the County and in the spring of 1900 reported progress in the case.¹²⁶ On March 22, 1901, came the inevitable writ of mandamus from the bench of Judge Sloan to which reference has already been made. Still the case dragged on requiring yet another journey to the Supreme Court of the United States. In the fall of 1901 Mr. Ford appealed to the Pima Supervisors for aid. He had spent \$315 for printing briefs of the case. He needed additional counsel in taking the case before the Supreme Court. Obviously there was then no retreat; yet Supervisor Rebeil gave an adverse vote on the ground that apparently there was no limit in the expenditure necessary in seeking escape from the horrid debt.¹²⁷ In spite of the objection, John G. Carlisle of New York was employed with a retainer fee of \$1,000 and an additional fee, not to exceed \$1,000, to be paid later.¹²⁸

Finally in March, 1902, the case, *Murphy vs. Utter* was argued before the Supreme Court of the United States, making the third time that the question concerning the Arizona Narrow Gauge Railroad had come before that body. The point at issue was an attempt to secure a decision declaring void the writ of mandamus, issued March, 1901, by Judge Sloan of the Supreme Court of the Territory, on the grounds:¹²⁹ (1) that the bonds and coupons sought to be refunded were not delivered by any one authorized by Pima County to do so; (2) that the County never acknowledged the validity of the bonds nor paid the interest on them; (3) that the railroad was never constructed, equipped, or operated; (4) that Pima County never received any consideration for the bonds; (5) "that petitioners were not

¹²⁵ *Minutes*, April 29, 1899.

¹²⁶ *Ibid.*, April 3, 1900.

¹²⁷ *Ibid.*, October 7, 1901.

¹²⁸ *Ibid.*, December 6, 1901.

¹²⁹ *Murphy vs. Utter*, U. S., 186, pp. 97-98.

innocent holders of them"; and (6) "that the bonds and coupons were not sold or exchanged in good faith, and in compliance with the act of legislature by which they were authorized."

The case was decided May 19, 1902. For a second time Justice Brown rendered a decision concerning the Arizona Narrow Gauge, and in his statement of the decision upheld the position of Judge Sloan of the Territorial Supreme Court that:

there was nothing in evidence showing bad faith on the part of the railroad company, as far as the first exchange of bonds was concerned, nor is there any evidence which shows bad faith on the part of the company or its contractor, Walker and his principals, Coler & Company, except their failure to continue the building and equipment of the road after the completion of the thirty miles of grading and laying of ten miles of track, except such inferences as may be drawn from the fact that both the railroad company and Coler & Company had difficulty in raising the money for the payment of the work done, and did not have the resources to go on and complete the work. Can the court say that, notwithstanding the fact that the bonds were exchanged in compliance with the terms of the act of February 21, 1883, they are invalid and not within the provisions of the act of Congress of June 6, 1896, because subsequent to their issue the original holders of these bonds failed to complete the railroad, and the county of Pima thereby received no benefit from the same? The question of a failure of consideration is to be distinguished from that of an exchange of bonds in good faith under the act of June 6, 1896, unless the failure of consideration was due to a failure on the part of the holders of the bonds to comply with the provisions of the act authorizing their issuance. . . . The only provision looking to the protection of the county was the one which required a certificate of the county surveyor, showing that five miles of the road was graded and laid with ties and iron, as a condition precedent to the exchange of each fifty thousand dollars of county bonds for a like amount of railroad bonds. As the Supreme Court has held in this case, Congress, by the act of June 6, 1896, has validated the territorial act of February 21, 1883. And as the latter did not make the completion of the road a condition precedent to the issuance of the bonds, nor make their validity dependent upon the subsequent conduct of the railroad company, bad faith cannot be predicated of the transaction so long as there was not only a substantial, but a literal, compliance, as well, with the requirements of the act under which they were issued.¹³⁰

Justice Brown concluded that the above judgment of the Supreme Court of Arizona was right and therefore affirmed

¹³⁰ *Ibid.*, pp. 112-13.

Arizona Reports, Vol. 7, pp. 314-15.

by the Supreme Court of the United States. For a second time the Territorial Loan Commission was ordered to proceed with the refunding of the railroad bonds of Pima County. Pima County, however, even in the face of this last decision was not yet convinced.

On June 2, 1902, Rochester Ford announced to the Pima County Board of Supervisors that the decision was against the County and that nothing further could be done in connection with the case. At that time at least one member suggested that the Board interview Mr. Ford officially to learn if there was anything that the County might do further in regard to the issue.¹³¹ Three weeks after the shock of the discouraging announcement just mentioned, the Board was back to its former fighting spirit.¹³² It was proposed that the Loan Commission be informed that Pima County would never consent to have its obligations funded into Territorial bonds; but if the recent court decision made it impossible for that Commission to resist refunding, then the County probably must surrender, but it would never consent to a rate of interest in excess of 3 per cent. Upon his own confession this maze of reasoning seemed quite beyond the comprehension of one Supervisor and at his suggestion the whole matter was deferred until after consultation with the Tucson Chamber of Commerce.

The unsolved problem dragged on through the summer and autumn of 1902. At one time in June the Loan Commission decided, after protest from Pima County, that the bonds be not funded.¹³³ In the fall the question was reconsidered with a representative present from the Pima Board of Supervisors.¹³⁴ Finally, February 12, 1903, the Loan Commission ordered the bonds funded and in succeeding months set about the task of converting the Pima bonds into Territorial bonds.¹³⁵

¹³¹ *Minutes*, June 2, 1902.

¹³² *Ibid.*, June 24, 1902.

¹³³ *Ibid.*, June 27, 1902.

¹³⁴ *Ibid.*, November 12, 1902.

¹³⁵ *Rept. of Governor to Sec. of Interior*, 1903, p. 259.

THE BONDS AND STATEHOOD

In the meantime a new force was brought to bear on the destiny of the Narrow Gauge bonds. At the very time that the Territorial Loan Commission ordered the conversion of the Pima bonds, Arizona was engaged in her perennial struggle for statehood. Early in 1903 the Omnibus Bill providing for statehood for four territories including Arizona was before Congress for discussion. The statehood question was one that involved a struggle, long drawn out and permeated by tortuous politics, and that extended into so many ramifications that a detailed discussion could not possibly be presented in connection with a treatment of the Arizona Narrow Gauge Railroad; yet there was between the two questions a definite relationship that admits of brief outline. The possibility of immediate statehood was of most vital interest to Coler and Company, holders of the Pima bonds. Up to date the United States laws and the interpretation of these at the hands of the national judiciary had all been to the advantage of the bondholders. On the other hand, should Arizona be granted statehood, and should the Arizona State Legislature at the earnest solicitation of Pima County declare the Pima County Railroad bonds invalid, all the king's horses and all the king's men could never restore them to their former position of value. There was but one other alternative; provision must be made for final settlement of the claims of the bondholders before Arizona should be granted statehood. Only under those conditions could the bondholders have any feeling of security. Bird S. Coler was not indifferent to the crisis. As seven years earlier, when he lobbied for the Act of 1896, he was again in 1903 in Washington looking after his interests.¹³⁶ He insisted that the Territory of Arizona was committed to a policy of opposition to the bondholders, a policy tinged with the dishonor of repudiation, and that statehood should never be her's until the claims of the creditors had been fully satis-

¹³⁶ *Washington Evening Star*, January 24, 1903.

fied. His plea was successful to such a degree that his efforts won recognition in the *Washington Star*, and another argument was lined up with the already overwhelming opposition to statehood for Arizona. Thus it came about that what had hitherto been merely a local problem of Pima County had by January, 1903, become a territorial problem intimately connected with that of securing statehood for Arizona.

The statement of Mr. Coler that the Territory of Arizona was opposed to the payment of the bonds applied only to the beginning of 1903, and therefore his accusation against the Territory as a whole was unjust. In February of that year the Territorial Loan Commission ordered the refunding of the Pima Railroad bonds. Pima County, however, still remained obdurate and continued to refuse to provide for a tax levy to meet the demands for a sinking fund and for interest then due the Territory. Arizona changed the nature of attack, no longer seeking cancellation, but relief from Congress. The Twenty-Second Territorial Legislature of Arizona again memorialized Congress in February, 1903. After recounting the entire history of the bonds since 1883, and dwelling at length on the unjust obligation and unwarranted imposition that past national legislation had placed upon Pima County, the Territorial Legislature prayed for relief "by an appropriation of sufficient funds from the Treasury of the United States to cover the sum total of the aforesaid bonds and the accrued interest."¹³⁷ Obviously Coler and Company were interested solely in having the bonds paid. But it was the task of those in Arizona upon whom the responsibility of payment rested to shift the burden, if possible, to the broad shoulders of the national Government. One year later, February, 1904, Arizona's Delegate to Congress, J. F. Wilson, introduced a bill in the Lower House providing for an appropriation of \$318,000 from the national Treasury. Delegate Wilson wired back to the Territory for support, and Pima County found itself facing further expenditure in connection with the detestable bonds. The County Supervisors employed William Herring as attorney with a retainer fee of \$1,500 and the promise of \$10,000 if successful in securing the appropriation. The expenditure was to be apportioned between Pima County and the

¹³⁷ *Report of Governor to Sec. of Interior*, 1903, p. 260.

new County of Santa Cruz.¹³⁸ The \$10,000, however, never had to be paid, for the desired relief was not destined to come in that way.

Even at that late date, and although they had suffered a continued succession of defeats, the interested taxpayers of Pima County had no idea of surrender. Resistance continued along the lines already developed, and consisted of praying the national Congress for relief and, on the part of Pima County officials, of refusal to provide for a tax levy to meet the payments on the bonds. For the next six years following 1904 each succeeding Congress was faced with a bill providing relief for Pima County, and each bill was carefully buried in some convenient committee. April 16, 1906, such a bill was introduced and referred to the Committee on the Judiciary.¹³⁹ December 3, 1907, Delegate Mark Smith introduced an identical bill which suffered the same fate.¹⁴⁰ In February, 1909, the Territorial Legislature of Arizona again memorialized Congress asking for relief,¹⁴¹ and the next month Delegate Cameron introduced the customary bill which was referred to the Committee on Territories.¹⁴²

In the meantime, while every effort was being made to have the national Government assume the debt that Pima County had so unwittingly accumulated, still another case was moving upward to the Supreme Court of the United States. It will be recalled that, in the case of *Murphy vs. Utter* decided May 19, 1902, the Territorial Loan Commission was ordered to refund the Pima County bonds into fifty years 3 per cent Territorial bonds. It will also be recalled that early in 1903 the Pima bonds were converted as ordered. In spite of the refunding, Pima County refused to provide for the interest payments due the Territory.¹⁴³ The highest Territorial court granted a mandamus compelling Pima County to levy a tax to meet the interest then due the Territory. Pima County resisted this and for the fourth time in the case of *Vail vs. Territory of Arizona*, went to the Supreme Court of the United States where in December,

¹³⁸ *Minutes*, February 18, 1904.

¹³⁹ *Cong. Rec.*, 59th Cong., 1st Sess., XL, 6, p. 5357.

¹⁴⁰ *Ibid.*, 60th Cong., 1st Sess., XLII, 6, p. 115.

¹⁴¹ *Ibid.*, 60th Cong., 2nd Sess., XLIII, 3, p. 2826.

¹⁴² *Ibid.*, 61st Cong., 1st Sess., XLIV, 1, p. 308.

¹⁴³ *Vail vs. Territory of Arizona*, U. S. 207, p. 204.

1907, the ruling of the Arizona Territorial court was upheld.¹⁴⁴ It was this background of court procedure, the continued mounting costs connected with it, and the probability of defeat that led to the renewed efforts to secure relief through national legislative means.

During the time that these attempts were being made another phase of the statehood problem was suddenly brought to the forefront. Hopes of an early admission into the Union were growing brighter in Arizona. In the event of that achievement another form of relief might possibly be realized. It had been the custom to send each territorial daughter forth with a suitable dowery. In the case of Arizona such an endowment might consist of freedom from past territorial follies. This emancipation could easily come in the form of adequate land grants from those portions of the public domain that lay within the boundaries of the proposed state. With this idea in mind Delegate Mark Smith included the following clause in his statehood bill introduced December 15, 1908:

For indemnifying the county of Pima from bonds issued for railroad construction in said county, which bonds were declared void by the United States Supreme Court, but were subsequently validated by act of Congress, there is hereby granted said State of Arizona in trust for the payment of said bonded indebtedness of said county 350,000 acres of land, to be selected as other granted lands are selected by the provisions of this act.¹⁴⁵

By the beginning of 1910 pressure was being applied to secure the land appropriation. It is quite obvious that the bondholders, hitherto strong enough to resist those interests in Arizona pleading for statehood, would no longer resist Arizona's admission but on the other hand would even ardently acquiesce, if statehood carried with it a land appropriation that assured them beyond a doubt the final payment of the bonds. Thus it came about that the champions for statehood in Arizona centered their attack on securing appropriations of land sufficiently large when sold to meet both interest and principal on the debt.

The forces at Washington against statehood—a discussion of the many intricacies of these forces must be reserved for another monograph—were, within certain well defined limitations, decidedly broken by January, 1910. In the past,

¹⁴⁴ *Ibid.*, p. 205.

¹⁴⁵ 60th Cong., 2nd Sess., H.R. 24143.

as has just been indicated, it had been the custom to launch each new state with sufficient endowment to meet the additional costs incident to statehood. Land grants had been made to endow state universities, normal schools, public schools, asylums, and prisons, and also to meet the expense of erecting public buildings. In the case of the Indian Territory, where there remained no unappropriated public lands, \$5,000,000 had been appropriated outright upon the bestowal of statehood. Because of these precedents, the propagandists for Arizona statehood asked that the land appropriation be made for the purpose of freeing the State of debts. Appropriations to such an end had never been made, as Senator Beveridge informed Delegate Cameron at a meeting of the Senate Committee on Territories, February 25, 1910:

Referring to your last remark, where you ask for appropriations to pay these debts so as to start out Arizona as other states were started out, I can tell you that that has not been done in a single case in the history of the United States.¹⁴⁶

The Senate had been the great stumbling block for Arizona statehood when previous measures had successfully passed the Lower House. It was to be expected that in the Senate the Land Appropriation clause was to face its severest test. The surprising thing is that it passed at all. There is but one explanation, and that is that those interests that had formerly feared the addition of four new Western Senators from Arizona and New Mexico by 1910 felt reasonably secure. Furthermore, they were in closest touch and sympathy with the creditors in the East who also had opposed statehood through fear of loss of bonds, but who would no longer oppose if statehood brought certainty of payment.

Mr. Hamilton of Michigan, Chairman of the Committee on Territories in the Lower House, moved on January 17, 1910 that the statehood bill pass in that body. The bill as introduced provided for an appropriation of 3,300,000 acres of land for Arizona and a like amount for New Mexico to be used in payment of the Territorial debts.¹⁴⁷ The amount was reduced to 3,000,000 acres each when it finally reached the Senate. Five months later, June 16, 1910, Senator Beveridge, Chairman of the Committee on Territories, intro-

¹⁴⁶ *Senate Hearings*, Committee on Territories, February 25, 1910.

¹⁴⁷ *Cong. Rec.*, 61st Cong., 2nd Sess., XLV, 1, p. 705.

duced the bill in the Senate and dwelt at length on the Land clause.¹⁴⁸ When it is recalled that previously Senator Beveridge had obstinately opposed statehood, the casual reader might have every ground for amazement at his sudden tenderness of conscience:

But the Senate committee agreed that there were certain bonds which the United States was morally obligated to pay. These were the bonds of Yavapai and Maricopa counties, in Arizona, and Santa Fe and Grant counties, in New Mexico. In both these cases bonds had been issued in the aid of a railroad. They had been illegally issued. In the Supreme Court of the United States, when the case was taken there, it was said by the unanimous opinion of the court, delivered by Mr. Justice Brown, in *Lewis v. Pima County* (155 U. S.), that it was "too clear for argument"—that the bonds were void by *ab initio*. . . .

After these bonds had been declared invalid by the Supreme Court, railroad promoters, or those interested in the building of railroads, persuaded Congress to pass a law validating those invalid bonds, both in New Mexico and Arizona, of the counties I have named. That was done, as the committee hearings show to establish credit for any other railroad securities in New York or other money centers. . . .

But whatever the reason was, Congress, after the Supreme Court had declared these bonds invalid, passed a law validating them. Upon that principle, I think it was practically the unanimous opinion of members of the Committee on Territories of the Senate that the United States should pay these bonds, because by reason of an act of Congress a moral obligation had been created; . . .

The people would not have to pay them but for the act of Congress. As a matter of fact, in the case of the Arizona bonds the people never got any benefit whatever from the bonds that were issued, absolutely none. The road was never built. But because Congress had morally pledged the United States the Senate bill appropriates land to redeem that pledge.¹⁴⁹

Miracle of miracles! This abrupt and contrite repentance on the part of the Senate of the United States in connection with the Pima County bonds and other similar obligations equaled any miraculous conversion ever recorded by medieval monkish historian. After Pima County had vainly lobbied for a bill granting relief; after that same County had spent a small fortune in litigation; after the Territorial Legislature had repeatedly memorialized Congress praying to be released from the obligation of the Pima County bonds; after every other possible means had been exhausted; then

¹⁴⁸ *Ibid.*, XLV, 8, pp. 8226-27.

¹⁴⁹ *Ibid.*

came the Senate of the United States and frankly asked to rectify an injustice inadvertently committed by the national legislature fourteen years before. Only the most naive could accept as valid the explanation offered by Senator Beveridge. Sufficient evidence has been presented to warrant the conclusion that the quiet whispering on the part of strong Eastern creditors, in the midst of the involved politics that made statehood for Arizona and New Mexico inevitable, carried far more weight than the sounding of a thousand voices from out the depths of an Arizona wilderness. One fact was evident; at least some form of relief had come.

The second session of the Sixty-First Congress was nearing its close in the midst of Washington heat. Possibly it was the weariness caused by humidity. Possibly it was the fear of losing statehood at the last minute. Possibly it was the realization that all that had been hoped for had at last been realized. At any rate, Mr. Hamilton of the Lower House urged that body to concur in the Senate amendment.¹⁵⁰ The measure became a law, June 20, 1910, and provided 1,000,000 acres of land the proceeds of which were to be used "for the payment of the bonds and the accrued interest thereon issued by Maricopa, Pima, Yavapai, and Coconino counties, Arizona . . ." ¹⁵¹ Over a quarter of a century had passed between the time of the launching of the ill-fated Narrow Gauge and the passing of the Enabling Act of 1910 with its provision of promised relief. For interested and public spirited citizens of Pima County it had been a stormy quarter of a century with many portentous periods. To many the grant of 1,000,000 acres of land meant the end of any further difficulties. It indicated the calm after the tempest. However, the last chapter of the Pima bonds had not yet been written by any means.

The bonds had been assumed as an obligation of the Territory after the opening of 1903. The Land Appropriation Clause gave assurance that they would continue as an obligation of the State. At the time of the passing of the Enabling Act in 1910, they had over forty years till maturity. It is this period of over forty years, 1910 to 1953, that is to present further problems demanding solution.

¹⁵⁰ *Ibid.*, p. 8486.

¹⁵¹ *U. S. Statutes*, Vol. 36, 1, p. 573.

THE EVERLASTING BONDS

The intricate political maneuvers between the passage of the Enabling Act of June 20, 1910 and the final achievement of statehood on February 14, 1912 had nothing to do with the Pima County Railroad bonds. That question had been definitely settled by the Land Appropriation Clause in the Enabling Act. When Arizona finally was admitted into the Union it became the duty of the State Legislature to provide for the disposal of the 1,000,000 acres of land that had been appropriated to the State by Congress.¹⁵² The next year after statehood, in 1913, State legislation was passed creating a Land Commission whose duty it was to select the land that had been granted by the National Act. By the Arizona statute the Land Commission was further authorized to begin the sale of the lands six months after the State secured title to them. It also lay within the power of the Commission to lease the lands for terms not to exceed five years if such a course seemed, in the mind of the Commission, to lead to greater returns.

As the Arizona law of 1913 provided for a twenty year term for the contract sale with 6 per cent interest on deferred payments, it was assumed that the greater portion of the land would quickly be sold. The total amount of bonds and accrued interest charged against the four Counties was \$868,805.82. Of this total the largest single sum was owed by Pima County on the Narrow Gauge bonds which amounted to \$318,275.29. The other amounts due the State, and also to be provided for in the land grant, were \$209,550.00, \$239,813.36, and \$101,167.17 in Maricopa, Yavapai, and Coconino Counties. Although the principal in Maricopa and Yavapai Counties was originally greater than the \$150,000 of Pima County bonds, the fact that Pima County had so long refused to pay interest after the bonds were issued and that the accrued interest was therefore greater than the

¹⁵² *Revised Statutes of Arizona*, 1913, Chap. IV, Title 43.

original debt is the explanation for the large amount due from Pima County.¹⁵³ The apportionment of the returns from the land appropriation, however, was made on the basis of the original principal, and the percentages due each county stood as follows: Pima County, 20.35 per cent; Yavapai County, 30.42 per cent; Coconino County, 17.22 per cent; and Maricopa County, 32.01 per cent.¹⁵⁴ The result of this basis of appropriation is obvious. Although the Pima County Railroad debt was the largest, the proportion of returns from land leases and land sales to Pima County was made next to the smallest so that the Narrow Gauge bonds would clearly be the last to be liquidated. The interest rate varied from 3 per cent on the Pima bonds to 4½ per cent on the others. It was the concensus of opinion that if sales could be made quickly at a minimum of three dollars per acre as provided by law so that the fund would not be depleted by long drawn out interest payments, a sinking fund would soon be built up ample in proportions to redeem the bonds when due and to provide for the annual interest payments. As a matter of fact the situation did not work out as anticipated. Practically all the land selected was grazing land. Owing to the relatively high tax rate and to the nature of the cattle industry, ranchers found it much more desirable to rent the land at the nominal rate of three cents an acre and leave the ownership in the hands of the State.¹⁵⁵ As the leases ran for five years and as the office of Land Commissioner was anxious to secure prompt renewals, cattlemen found that a lease once secured was almost a vested interest.

The office of Land Commissioner was created in 1914 and took over the work of the original Land Commission. The political advantages resulting from the creation of a new state office are quite obvious, but a discussion of that situation is unnecessary since it has nothing to do with the treatment of the Railroad bonds and their payment.

The changed machinery in no way affected results, and the work of selecting land as provided for in the County Bond Grant moved forward rapidly. By the end of 1914 over 70,250 acres had been selected.¹⁵⁶ Two years later this had

¹⁵³ *State Treasurer's Report*, 1922, p. 111.

¹⁵⁴ *Ibid.*, p. 119.

¹⁵⁵ Interview, April, 1933, H. J. Smith, Land Commissioner.

¹⁵⁶ *Report of State Land Commissioner*, 1914, p. 160.

risen to nearly 860,000 acres; and by June 30, 1917, to 933,811.97 acres with only 6,188.03 yet to be selected out of the total of 1,000,000 acres appropriated.¹⁵⁷ By the end of the fiscal year of 1930 there remained less than 500 acres still to be listed.¹⁵⁸ These selections were made from desirable land in any county of the State, and so were not confined to nor apportioned among the four Counties that were benefitted by the grant.

In 1915, the year after the creation of the office of Land Commissioner, the Arizona legislature in special session further defined and limited the County Bond Land fund. This was another example of short sighted legislation the evil effects of which are reserved for later discussion. This law definitely arranged for the disposal of the Trust fund, providing first of all, that the current interest on the bonds should be met. It next provided that the counties were to be reimbursed for the interest "accrued and paid by them since the date of issuance."¹⁵⁹ Finally, after the above payments had all been made, the remainder of the fund was to be used "to retire the said bonds when due."¹⁶⁰ The Act optimistically looked forward finally to closing out the fund and provided that, when these payments had been made and the bonds were at last retired, whatever remained of the fund either in money or land "shall be added and become a part of the permanent school fund."¹⁶¹ The public school system of Arizona, however, as shall be explained later, has no grounds for immediate elation because of any hope of additions to the revenue from the County Bonds Land fund.

Although the Pima County Railroad bonds were funded into Territorial bonds in 1903 following litigation already discussed, it will be recalled that for four years following that date Pima County refused to reimburse the Territory for the 3 per cent interest on the refunded principal and accrued interest that was being paid by the Territory of Arizona. After the fourth case, *Vail vs. Territory of Arizona*, had been decided by the Supreme Court of the United States, December, 1907, Pima County was forced to pay into

¹⁵⁷ *Ibid.*, June 30, 1917, p. 5.

¹⁵⁸ *Ibid.*, June 30, 1930, p. 4.

¹⁵⁹ *Special Session Laws of Arizona*, 1915, Sec. 101, Chap. 5.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

the Territorial treasury and later into the State treasury a sum equal to the amount of the interest on the refunded debt. This annual payment by Pima County continued from 1907 through 1919 when the last tax levy of eleven mills on each \$100 of assessed valuation was made to meet the payments due the State.¹⁶² It is sometimes erroneously stated, and the myth seems to persist, that Pima County paid interest over a long period of years and is even now in 1933 paying on the notorious Narrow Gauge bonds. Had it not been for the dauntless courage and fighting spirit of County officials through the long period of litigation such might have been the case. As a matter of fact Pima County taxes were levied for interest payments on the bonds only from 1907 to the end of 1919.

For a period of ten years after statehood Pima County and the other three counties concerned received not a cent from the County Bonds Land fund. Each had to pay interest, as just indicated, on its share of the debt. Although the national Government had in 1910 made the appropriation of 1,000,000 acres to become available at the time of statehood, although the State Legislature had in 1913 created a Land Commission and in 1914 a Land Commissioner to select and administer the lands, and although, as already stated, by June 13, 1917, nearly 994,000 acres had been selected ready for lease or sale, yet the State Treasurer and State Auditor hesitated without further authority, to distribute the funds which by 1922 had reached an amount in excess of \$235,000. It was a question in the minds of the State officials whether the State Legislature of 1915 had the authority to designate the three purposes for which the funds should be distributed since the National Enabling Act of 1910 held the State responsible for the funds. A writ of mandamus was issued from the Superior Court of Maricopa County commanding the State Auditor and the State Treasurer to audit the claims of the counties and to reimburse them for amounts of interest they previously had paid on the railroad bonds. Still the officials hesitated questioning the authority of the court rendering the decision.¹⁶³ From this decision the case

¹⁶² *Tax Apportionment Sheet, Pima County, 1919.*

¹⁶³ *Appellees' Brief and Argument, Supreme Court of Arizona, No. 2017, pp. 7-15.*

was appealed to the Supreme Court of the State where the original decision was sustained late in July, 1922.¹⁶⁴

Thus it came about that Pima County was forced once more into litigation concerning the Narrow Gauge bonds. An entire battalion of lawyers from the four counties concerned were employed to present the case before the highest court. Finally, Pima and the other three counties secured the decision which they desired. But even this apparent good fortune may ultimately prove a misfortune for the State before the bonds are finally liquidated, if indeed that day ever comes. Something of the old enthusiasm and the old exaggeration of the early Narrow Gauge days seemed to pervade Tucson's account of the court decision. Perhaps the ghost of the old Narrow Gauge still lingered in 1922 among familiar haunts with its former baleful touch:

A sum exceeding \$150,000 is netted the taxpayers of Pima County as a result of a decision which has been handed down by the Arizona Supreme Court, copies of which reached Tucson this morning, according to an announcement by County Attorney George R. Darnell.

This amount, according to the county attorney, who has represented Pima County in the appeal case, will later be paid into the general fund of this county and may have the effect of creating a marked reduction in taxation, although this will not be feasible during the present year.¹⁶⁵

It will be recalled that the sum obtained as a result of the suit was little in excess of \$235,000 and that Pima County's share was next to the smallest percentage. It is also a safe conclusion to draw that the tax rate in not a single one of the four counties was ever reduced because of any amounts paid to them from the County Bonds Land fund.

The question has already been raised whether the Act of 1915 in the State Legislature and the court decisions following will work actually to the advantage of the State. Had the Act of 1915 not provided for reimbursing the counties for amounts of interest previously paid, and had the surplus in the fund, accumulated in excess of current interest payments, been used to build up a sinking fund or actually to redeem the outstanding railroad bonds there might now be some prospect of ultimately liquidating the debt. As the situation stands in the midst of the depression of 1933, the returns from the leases each year are no more than enough

¹⁶⁴ *Arizona Reports*, 24, No. 2017.

¹⁶⁵ *Tucson Citizen*, July 31, 1922.



Photograph by J. G. Brown.

Site of Narrow Gauge Bridge, 1934—West of Oracle Road and north of Ina Road. All ties and other woodwork have long since been removed for fuel.

to pay the current interest on the bonds. No sinking fund has been built up.¹⁶⁶ Nothing, in fact, has been gained by the counties because of the reimbursements. The money has always been turned into the general fund of the several counties. Occasions have arisen when County Treasurers have expressed surprise upon receipt of the payments. They indicated absolute ignorance of the debt, its origin, and the law that provided for a transfer of funds from the State Treasury to that of the four counties. In the meantime the fund has been consumed each year without any provision for payment of the bonds when due in 1953.

This raises an important question. What is to be done with the railroad bonds when they fall due in 1953? It should be understood that Pima and the other three counties were relieved of all further responsibility with the passage of the Land Appropriation clause in the Enabling Act of 1910. But what is the State of Arizona going to do? The original debt of \$868,805.82 will exist at the middle of the century just as it did at the advent of statehood. The bonds are no nearer redemption now than they were the day they were refunded one third of a century ago.

Two possibilities face the State at the maturity of the bonds neither of which Arizona can afford. One is to assume that the bondholders, whether innocent or otherwise, have been paid enough and that the debt will be repudiated. It is doubtful if any administration will dare to follow such an extreme course. Such a course lies within the sovereign rights of a state. It was the very thing that the bondholders feared might take place upon the acquisition of statehood and therefore the provision for the land appropriation. Such action, however, would strike a blow at the State's credit, the results of which no administration could face. No, in all probability Arizona will never afford the cost of repudiation. A second possibility lies in issuing new bonds to be given in exchange for the old ones upon their maturity. If no provision is made for their redemption other than the land appropriation, then refunding may succeed refunding till the end of time. Presumably some provision would be made for a sinking fund. That too will be expensive and will put a burden of taxation on the State—a burden carried over from pioneer days and placed on succeeding generations by the

¹⁶⁶ Interview, April, 1933, H. J. Smith, State Land Commissioner.

folly of county officials and the reprehensible action of dishonest promoters. One statement can be made within the bounds of probable certainty: the close of the present century will see the Pima County Narrow Gauge bonds and similar obligations as great a liability of the State as at the beginning of the century.

The Arizona Narrow Gauge Railroad exists in the minds of many of the people of Pima County merely as a name. Many even have never heard the name. Still others continue to repeat fragments of the story in half legendary form. A few now living at the close of 1933 once went by flat car on picnic excursions as the little engine pulled its train to the end of the 10 miles of track near the Steam Pump ranch. Many of these cannot recall the final disposal of the rails and the equipment.¹⁶⁷ Time has even dulled all indignation concerning the fraud. Some recall the days of the exploitation, but very few can recite the story of the events in any clearness of detail. Others with finger at lips and in whispered words will beg to be excused from relating the account of the loss of the first lot of bonds, since the descendants of those implicated still live. In this narrative there has been no attempt to accuse anyone or to attach dishonor to any name, but rather to treat the subject as typical of every frontier community.

Today, as one strolls westward from the Oracle road he may discover bits of embankment of this historic railroad. Vaguely can he trace the course where once the track ran northward out of Tucson toward the Pinal County line. This is gradually disappearing and soon will be lost forever in the desert. All too soon will pass the last of those heroic souls, the pioneers, those who knew the chief actors in the enterprise and who recall the days of enthusiasm, of propa-

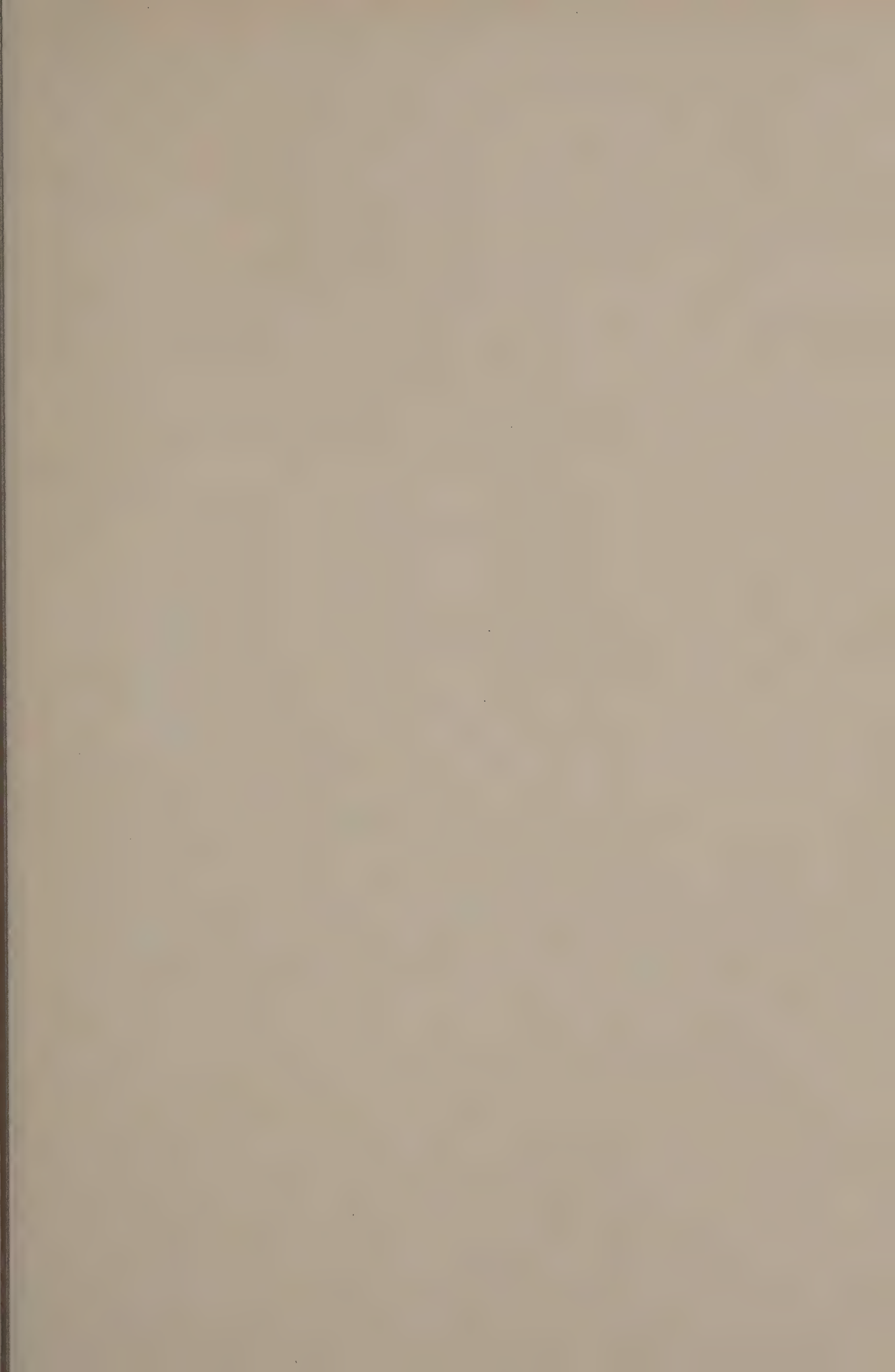
¹⁶⁷ Interview, December, 1933, J. Knox Corbett, Sr.

The rails and other equipment were sold sometime during the nineties at sheriff sale for taxes. The light rails were resold at considerable profit and used on a street car line in Hollywood, California.

Arizona Daily Star, February 28, 1894.

The old narrow gauge road engine has been placed on a flat car and will be shipped in a few days to Los Angeles to be used on one of the lines running out of that city. With a little cleaning and repairing it will be in as good condition as when first brought here.

ganda, and of despair. Then perhaps the name of the Narrow Gauge will pass and be forgotten. But after all these are gone and after the last bit of embankment has been forever leveled out of sight, there still will remain **the everlasting bonds.**



UNIVERSITY OF ARIZONA PUBLICATIONS

Agricultural Experiment Station Publications

- General Bulletins
- Technical Bulletins
- Annual Reports

Agricultural Extension Service Publications

- Agricultural Extension Circulars
- Annual Reports

University of Arizona Record

- Loan Play Library Announcement
- Summer Session Announcement
- University Announcement of Courses
- Directory of Films and Slides
- Financial Report of the Board of Regents
- Correspondence Courses Announcement

University of Arizona Bulletins

- Arizona Bureau of Mines Bulletins
- Fine Arts Bulletins
- Humanities Bulletins
- Social Science Bulletins
- Biological Science Bulletins
- Physical Science Bulletins
- General Bulletins

Copies of the above publications may be obtained by request to the Director of the Mailing Bureau, University of Arizona, Tucson, Arizona. A charge of fifteen cents is made for the University of Arizona Announcement of Courses, and in some instances, a nominal charge is made for University of Arizona Bulletins.



8/3/2018

431239 5 22

00



HF GROUP - IN

